

STATE OF MICHIGAN
 DEPARTMENT OF TECHNOLOGY, MANAGEMENT AND BUDGET
 PROCUREMENT
 P.O. BOX 30026, LANSING, MI 48909
 OR
 530 W. ALLEGAN, LANSING, MI 48933

February 27, 2013

CHANGE NOTICE NO. 4
 to
CONTRACT NO. 071B0200079
 between
THE STATE OF MICHIGAN
 and

NAME & ADDRESS OF CONTRACTOR:	PRIMARY CONTACT	EMAIL
Health Management Systems, Inc. 401 Park Avenue South New York, NY 10016	Kimberly Glenn	kglenn@hms.com
	TELEPHONE	CONTRACTOR #, MAIL CODE
	(704) 927-8310	

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
CONTRACT COMPLIANCE INSPECTOR	DCH	Greg Rivet	517-335-5096	rivetg@michigan.gov
BUYER	DTMB	Lance Kingsbury	517-241-3768	kingsburyl@michigan.gov

CONTRACT SUMMARY:			
DESCRIPTION: Medicaid Third Party Liability Recovery Services – Statewide - Department of Community Health			
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
January 1, 2010	December 31, 2012	2, 1 Year Options	February 28, 2013
PAYMENT TERMS	F.O.B	SHIPPED	SHIPPED FROM
2% Net 10	N/A	N/A	N/A
ALTERNATE PAYMENT OPTIONS:			AVAILABLE TO MiDEAL PARTICIPANTS
<input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
MINIMUM DELIVERY REQUIREMENTS:			
N/A			

DESCRIPTION OF CHANGE NOTICE:				
EXTEND CONTRACT EXPIRATION DATE	EXERCISE CONTRACT OPTION YEAR(S)	EXTENSION BEYOND CONTRACT OPTION YEARS	LENGTH OF OPTION/EXTENSION	EXPIRATION DATE AFTER CHANGE
<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/>	<input type="checkbox"/>	2 Months	April 30, 2013
VALUE/COST OF CHANGE NOTICE:		ESTIMATED AGGREGATE CONTRACT VALUE REMAINS:		
\$0.00		\$12,210,000.00		

Effective March 1, 2013, this Contract is hereby EXTENDED to April 30, 2013. Please note the Contract Compliance Inspector has changed to Greg Rivet.

All other terms, conditions, specifications, and pricing remain the same.

Per agency and vendor agreement and DTMB Procurement approval.

STATE OF MICHIGAN
 DEPARTMENT OF TECHNOLOGY, MANAGEMENT AND BUDGET December 4, 2012
 PROCUREMENT
 P.O. BOX 30026, LANSING, MI 48909
 OR
 530 W. ALLEGAN, LANSING, MI 48913

CHANGE NOTICE NO. 3
 To
CONTRACT NO. 071B0200079
 Between
THE STATE OF MICHIGAN
 And

NAME & ADDRESS OF CONTRACTOR:	PRIMARY CONTACT	EMAIL
Health Management Systems, Inc. 401 Park Avenue South New York, NY 10016	Kimberly Glenn	kglenn@hms.com
	TELEPHONE	CONTRACTOR #, MAIL CODE
	(704) 927-8310	

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
CONTRACT COMPLIANCE INSPECTOR:	DCH	Laura Dotson	(517) 241-4686	Dotsonl1@michigan.gov
BUYER:	DTMB	Lance Kingsbury	(517) 241-3768	kingsburyl@michigan.gov

INITIAL CONTRACT SUMMARY:			
DESCRIPTION:			
Medicaid Third Party Liability Recovery Services – Statewide - Department of Community Health			
INITIAL TERM	EFFECTIVE DATE	INITIAL EXPIRATION DATE	AVAILABLE OPTIONS
3 Yrs.	January 1, 2010	December 31, 2012	2, 1 Yr. Options
PAYMENT TERMS	F.O.B	SHIPPED	SHIPPED FROM
2% Net 10	N/A	N/A	N/A
ALTERNATE PAYMENT OPTIONS:			AVAILABLE TO MiDEAL PARTICIPANTS
<input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input type="checkbox"/> YES <input type="checkbox"/> NO
MINIMUM DELIVERY REQUIREMENTS:			
N/A			

DESCRIPTION OF CHANGE NOTICE:	
OPTION EXERCISED: <input type="checkbox"/> NO <input checked="" type="checkbox"/> YES	IF YES, NEW EXPIRATION DATE: February 28, 2013
Effective December 31, 2012, this Contract is hereby EXTENDED through February 28, 2013. All other terms, conditions, specifications, and pricing remain unchanged. Per agency and vendor agreement and DTMB Procurement approval.	
VALUE/COST OF CHANGE NOTICE:	\$0.00
ESTIMATED AGGREGATE CONTRACT VALUE REMAINS:	\$12,210,000.00

STATE OF MICHIGAN
 DEPARTMENT OF TECHNOLOGY, MANAGEMENT AND BUDGET
 PROCUREMENT
 P.O. BOX 30026, LANSING, MI 48909
 OR
 530 W. ALLEGAN, LANSING, MI 48913

June 1, 2012

CHANGE NOTICE NO. 2
 To
CONTRACT NO. 071B0200079
 Between
THE STATE OF MICHIGAN
 And

NAME & ADDRESS OF CONTRACTOR:	PRIMARY CONTACT	EMAIL
Health Management Systems, Inc. 401 Park Avenue South New York, NY 10016	Kimberly Glenn	kglen@hms.com
	TELEPHONE	CONTRACTOR #, MAIL CODE
	(704) 927-8310	

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
CONTRACT COMPLIANCE INSPECTOR:	DCH	Laura Dotson	(517) 241-4686	Dotson1@michigan.gov
BUYER:	DTMB	Lance Kingsbury	(517) 241-3768	kingsburyl@michigan.gov

INITIAL CONTRACT SUMMARY:			
DESCRIPTION: Medicaid Third Party Liability Recovery Services – Statewide - Department of Community Health			
INITIAL TERM	EFFECTIVE DATE	INITIAL EXPIRATION DATE	AVAILABLE OPTIONS
3 Yrs.	January 1, 2010	December 31, 2012	2, 1 Yr. Options
PAYMENT TERMS	F.O.B	SHIPPED	SHIPPED FROM
2% Net 10	N/A	N/A	N/A
ALTERNATE PAYMENT OPTIONS:			AVAILABLE TO MiDEAL PARTICIPANTS
<input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input type="checkbox"/> YES <input type="checkbox"/> NO
MINIMUM DELIVERY REQUIREMENTS:			
N/A			

DESCRIPTION OF CHANGE NOTICE:	
OPTION EXERCISED: <input checked="" type="checkbox"/> NO <input type="checkbox"/> YES	IF YES, NEW EXPIRATION DATE:
<p>Effective immediately, the attached changes are hereby incorporated in this Contract.</p> <p>All other terms, conditions, specifications, and pricing remain unchanged.</p> <p>Per agency and vendor agreement and DTMB Procurement approval.</p>	
VALUE/COST OF CHANGE NOTICE:	\$0.00
ESTIMATED AGGREGATE CONTRACT VALUE REMAINS:	\$12,210,000.00

Changes to Contract #071B0200079

April 3, 2012

Activity F. Medical Support Enforcement – National Medical Support Notices

Agreement with Department of Human Services (DHS) and the Department of Community Health (DCH) to terminate this activity as of **April 1, 2012**.

Reason for termination:

- DHS advised they wish to take this function back as part of their work process.

Activity E. Estate Recovery – Change Request

The Estate Recovery project was under development when this contract was awarded. The following changes identify the requirements of the contractor but are not restricted from alteration. Any further changes for the remainder of this contract will be documented using a Memo of Understanding between the Contractor and DCH because of the continuing development of this project.

Requested Change

Activity E. Estate Recovery

Federal law and regulations required Michigan to establish a program to recover the cost of medical services reimbursed by Medicaid and received by certain beneficiaries prior to their death. At the time of the original RFP, parameters had not yet been finalized. On May 23, 2011, specific parameters were approved in State Plan Amendment 10-18 (SPA).

The estate recovery program will apply to the costs of medical services reimbursed by Medicaid and received by certain beneficiaries prior to their death. Beneficiaries impacted by the estate recovery program will be those aged 55 years or older when the services were received. Medicaid beneficiaries dually eligible for Medicare will be impacted by the estate recovery program. For these individuals recoveries will also include, but may not be limited to, coinsurance and deductible payments and/or Medicare premiums paid on their behalf.

1. Although not relative to Medicaid estate recovery, experience working with Michigan's legal system is desired. The Contractor must employ or subcontract with legal counsel, licensed to practice in the State of Michigan.
2. Appropriate policies and procedures, as well as informational material, will be developed to assure that all applicants for Medicaid benefits potentially impacted by the

program will be advised of and acknowledge the program's requirements. DCH will work cooperatively with Contractor to establish protocols as needed, with DCH having final approval. The Contractor will be provided with the final approved protocols and must conduct activities according to requirements set out in the protocols.

3. The estate recovery program will be managed by DCH's Third Party Liability (TPL) Electronic Database (known as TED), a multi-faceted system that includes information about Medicaid beneficiaries as well as paid claims information related to any potential estate recovery. DCH will, on a weekly basis, conduct a match to identify beneficiaries that meet the criteria for estate recovery. TED will identify Medicaid beneficiaries who have been reported as deceased and whose estates should be evaluated in order to recover payments made by the Medicaid program.

The death information on TED results from reports made to Medicaid eligibility workers by relatives of and legal representatives for Medicaid beneficiaries, by providers of service and through data matches with Michigan Vital Records maintained by DCH, with files from the Social Security Administration, and claims paid with a discharge status code indicating death. In many instances the information is obtained sometime after the beneficiary's death and it is recognized that learning of these deaths sooner would be advantageous to the program's recovery efforts.

4. Immediately upon learning of the death of a Medicaid beneficiary, or the creation of a case in TED by the match, for whom estate recovery must be initiated, but at least within 30 days of learning that a beneficiary has died, the Contractor must send a Notice of Intent to File a Claim Against the Estate ("NOI") and questionnaire to the personal representative or legal representative for the estate, if known. The NOI and questionnaire must be in a format approved by DCH.

If the personal representative or estate's legal representative is unknown, the Contractor will, within 30 days of the case being created in TED by the match, send correspondence approved by DCH to the last known address or nursing facility, if there is one, to learn the identity of a contact for the estate.

DCH will work cooperatively with the Contractor to establish the protocols the Contractor must use to determine and notify DCH that legal representation is necessary and/or desired. DCH will have final approval of protocols. DCH will determine if assistance/representation by the Michigan Office of Attorney General (AG) is required. The AG will represent DCH in all circumstances when legal representation is necessary. The Contractor must cooperate in this process as needed. If AG representation is requested, the Contractor will be required to provide any necessary supporting documentation from the estate recovery case file. TED must be updated to reflect this action.

If a Notice to Creditors is received by DCH from a personal representative of an estate for a deceased Medicaid beneficiary such notice will be immediately forwarded to the Contractor. Similarly, if DCH staff receives any telephone calls, letters, or legal

documents potentially related to an estate recovery claim such information or documents will be forwarded to the Contractor.

TED must be updated to reflect any notice issued by the Contractor or forwarded to the Contractor by DCH. Similarly, information regarding other documents or contacts pertinent to the recovery must, as appropriate, be added to the TED.

5. Any notices, forms, or letters used by the Contractor in administering the estate recovery program must be prior approved by DCH. Such approval will be conditioned upon the parameters of the estate recovery program approved by CMS, and the documents' review and acceptance as to form and conformance with federal requirements and state statute by DCH legal staff.

6. Upon receipt of the questionnaire and other documents, the Contractor must conduct any appropriate due diligence including, but not limited to:

- An asset search including the assessed value of the property if available;
- A search for open probate cases regarding the Medicaid beneficiary.

Following any necessary due diligence, the Contractor must determine whether, based on agreed-upon protocols, any statutory exemption criteria are met according to protocols developed in coordination with DCH and Contractor. Following this evaluation, the Contractor must compile a case that includes a copy of the questionnaire and all other related documentation as well as a detailed record of the results of the asset search. TED must be updated to reflect the information in the case, as appropriate.

The Contractor must be available by telephone for a discussion of the case if necessary. DCH will determine if any or all of the estate recovery claim will be waived due to cost-effectiveness and will work with the Contractor to advise the deceased's legal representative of the State's intent to pursue recovery. Undue hardship applications will be reviewed according to requirements set out in SPA 10-18. The Contractor must refer to approved protocols when reviewing statutory exemptions. The legal representative will be given an opportunity for appeal and an administrative hearing related to the proposed recovery. The Contractor will be advised of the ultimate results of any administrative appeal.

7. Following issuance of the proposed estate recovery notice, the Contractor must initiate actions to recover funds associated with the value of the real and/or personal property identified. The Contractor will process cases according to strict timelines set out in the Estates and Protected Individuals Code, MCL §§ 700.1101 - 700.8206.

8. Payment will be made on a contingency basis as a percentage of any amounts recovered by Contractor through the estate recovery process and provided to the State.

STATE OF MICHIGAN
DEPARTMENT OF TECHNOLOGY MANAGEMENT AND BUDGET September 2, 2011
PURCHASING OPERATIONS
 P.O. BOX 30026, LANSING, MI 48909
 OR
 530 W. ALLEGAN, LANSING, MI 48933

CHANGE NOTICE NO.1
TO
CONTRACT NO. 071B0200079
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF CONTRACTOR		TELEPHONE (704) 927-8310
Health Management Systems, Inc. 401 Park Avenue South New York, NY 10016 kglen@hms.com		Kimberly Glenn
		BUYER/CA (517) 241-3768 Lance Kingsbury
Contract Compliance Inspector: Laura Dotson (517.241.4686)		
Medicaid Third Party Liability Recovery Services – Statewide - Department of Community Health		
CONTRACT PERIOD:		From: January 1, 2010 To: December 31, 2012
TERMS	2% Net 10	SHIPMENT N/A
F.O.B.	N/A	SHIPPED FROM N/A
MINIMUM DELIVERY REQUIREMENTS N/A		

NATURE OF CHANGE(S):

Effective September 16, 2011, this contract is hereby **INCREASED** by \$210,000.00. Please see the attached page for language concerning this change notice. All other terms, conditions, pricing and specifications remain the same.

AUTHORITY/REASON(S):

Per agency and State AdBoard approval dated September 15, 2011.

INCREASE: \$210,000.00

TOTAL REVISED ESTIMATED CONTRACT VALUE: \$12,210,000.00

The Michigan Department of Community Health (MDCH) and Health Management Systems, Inc. (HMS) agree that the Medicaid Third Party Liability Recovery Services Contract will be amended by operation of this First Amendment with respect to Activity D - Hospital Credit Balance/Overpayment Audits and Activity G - Potential Third Party Liability Activities as follows.

1. Amendment to Scope of Service of Activity D

Effective June 1, 2011, the parties agree that Section 1 of Activity D is deleted in its entirety and replaced with the following:

The objective of this activity is to identify potential overpayments through retrospective audits of hospitals to ensure that appropriate funds are returned to DCH. This activity does not include a review of the medical coding on claims submitted to and paid by Medicaid; it is limited to coordination of benefits and the appropriate reporting by the hospitals of payments from liable third parties to reduce the amount due from Medicaid. These liable third parties may be health insurers or other Entities defined at MCL 550.281, automobile insurance carriers, workers' compensation insurers, malpractice or general liability insurance carriers or even individuals or corporations. This activity specifically includes the identification and recovery of duplicate payments made by Medicaid. In addition, this activity does not include a review of claims reimbursed by Medicaid-contracted MCOs; these managed care organizations are responsible for their own coordination of benefit activities.

2. Amendment to Scope of Service of Activity G

Effective June 1, 2011, the parties agree that Activity G shall be amended to include a new Paragraph 2 with the heading "Credit Balance Audits of Provider Types Other than Hospitals" as follows:

a. Expansion of Credit Balance Audits to Other Facilities

HMS will commence credit balance audits for facilities other than hospitals as approved by MDCH. HMS and MDCH agree to develop additional pilot credit balance projects to demonstrate the potential for increased recoveries. Each Pilot project will be submitted to MDCH by HMS for approval prior to implementation. Pilot projects will run for a minimum of three months and a maximum of six months, exclusive of implementation. At the end of the Pilot project, HMS will submit a project overview report to MDCH. Upon review, MDCH may convert the pilot project to an ongoing project pursuant to the terms of this First Amendment or may terminate the pilot project as an ineffective means of cost savings.

b. Pilot Project Approach

HMS will submit pilot project proposals to MDCH in a mutually approved format to include a statement of work to be performed and an estimate of the associated recoveries. Examples of acceptable pilots include (but are not limited to) the following:

- Auditing a distinct group of provider types (e.g., long term care facilities, radiology, home health) to identify overpaid claims and improper payments.
- Utilizing various data mining analyses of Michigan's paid claims file to identify specific overpayments by claim type; provider type; carrier; payment rules; coordination of benefits. Examples of expected types of overpayments include overlapping inpatient claims from two different providers; claims paid after the date of death; orphan transportation payments; etc.
- Information-gathering projects which provide data to MDCH but which do not result in recoveries.

c. Fees

Pilot projects conducted as actual audits will be paid at the contingency rate of 8.5% of recovered dollars. Pilot projects which are information-gathering in nature will be paid a flat fee to be negotiated between MDCH and HMS and reduced to writing prior to implementation.

**STATE OF MICHIGAN
 DEPARTMENT OF MANAGEMENT AND BUDGET
 PURCHASING OPERATIONS
 P.O. BOX 30026, LANSING, MI 48909
 OR
 530 W. ALLEGAN, LANSING, MI 48933**

December 30, 2009

**NOTICE
 TO
 CONTRACT NO. 071B0200079
 between
 THE STATE OF MICHIGAN
 and**

NAME & ADDRESS OF CONTRACTOR		TELEPHONE (704) 927-8310 Kimberly Glenn
Health Management Systems, Inc. 401 Park Avenue South New York, NY 10016		
kglen@hms.com		BUYER/CA (517) 241-3768 Lance Kingsbury
Contract Compliance Inspector: Laura Dotson (517.241.4686) Medicaid Third Party Liability Recovery Services – Statewide - Department of Community Health		
CONTRACT PERIOD: From: January 1, 2010 To: December 31, 2012		
TERMS	SHIPMENT	
2% Net 10		N/A
F.O.B.	SHIPPED FROM	
N/A		N/A
MINIMUM DELIVERY REQUIREMENTS N/A		

The terms and conditions of this Contract are those of RFP #071I9200241, this Contract Agreement and the Contractor's quote dated 9/3/2009. In the event of any conflicts between the specifications, and terms and conditions, indicated by the State and those indicated by the Contractor, those of the State take precedence.

Current Authorized Spend Limit: \$12,000,000.00

**STATE OF MICHIGAN
 DEPARTMENT OF MANAGEMENT AND BUDGET
 PURCHASING OPERATIONS
 P.O. BOX 30026, LANSING, MI 48909
 OR
 530 W. ALLEGAN, LANSING, MI 48933**

**CONTRACT NO. 071B0200079
 between
 THE STATE OF MICHIGAN
 and**

NAME & ADDRESS OF CONTRACTOR Health Management Systems, Inc. 401 Park Avenue South New York, NY 10016 <div style="text-align: right;">kglenn@hms.com</div>	TELEPHONE (704) 927-8310 Kimberly Glenn BUYER/CA (517) 241-3768 Lance Kingsbury
Contract Compliance Inspector: Laura Dotson (517.241.4686) Medicaid Third Party Liability Recovery Services – Statewide - Department of Community Health	
CONTRACT PERIOD: From: January 1, 2010 To: December 31, 2012	
TERMS <div style="text-align: center;">2% Net 10</div>	SHIPMENT <div style="text-align: center;">N/A</div>
F.O.B. <div style="text-align: center;">N/A</div>	SHIPPED FROM <div style="text-align: center;">N/A</div>
MINIMUM DELIVERY REQUIREMENTS <div style="text-align: center;">N/A</div>	
MISCELLANEOUS INFORMATION: <p>The terms and conditions of this Contract are those of RFP #07119200241, this Contract Agreement and the Contractor's quote dated 9/3/2009. In the event of any conflicts between the specifications, and terms and conditions, indicated by the State and those indicated by the Contractor, those of the State take precedence.</p> <p>Current Authorized Spend Limit: \$12,000,000.00</p>	

THIS IS NOT AN ORDER: This Contract Agreement is awarded on the basis of our inquiry bearing the RFP #07119200241. Orders for delivery may be issued directly by the Department of Community Health through the issuance of a Purchase Order Form.

FOR THE CONTRACTOR:

Health Management Systems, Inc.
 Firm Name

Authorized Agent Signature

Authorized Agent (Print or Type)

Date

FOR THE STATE:

Signature
Sergio Paneque, Director
 Name/Title

Business Services Administration
 Division

Date



**STATE OF MICHIGAN
Department of Management and Budget
Purchasing Operations**

Contract No. 071B0200079

Medicaid Third Party Liability Recovery Services

Buyer Name: Lance Kingsbury
Telephone Number: 517.241.3768
E-Mail Address: kingsburyL@michigan.gov



Table of Contents

DEFINITIONS..... 7

Article 1 – Statement of Work (SOW) 11

1.010 Project Identification 11

 1.011 Project Request 11

 1.012 Background 11

1.020 Scope of Work and Deliverables 13

 1.021 In Scope 13

 1.022 Work and Deliverable 14

1.030 Roles and Responsibilities 32

 1.031 Contractor Staff, Roles, and Responsibilities 32

1.040 Project Plan 32

 1.041 Project Plan Management 32

 1.042 Reports 34

1.050 Acceptance 35

 1.051 Criteria 35

 1.052 Final Acceptance – Deleted – NA 35

1.060 Proposal Pricing 35

 1.061 Proposal Pricing 35

 1.062 Price Term 35

 1.063 Tax Excluded from Price 35

1.070 Additional Requirements 36

 1.071 Additional Terms and Conditions specific to this Contract 36

Article 2, Terms and Conditions 37

2.000 Contract Structure and Term 37

 2.001 Contract Term 37

 2.002 Options to Renew 37

 2.003 Legal Effect 37

 2.004 Attachments & Exhibits 37

 2.005 Ordering 37

 2.006 Order of Precedence 37

 2.007 Headings 37

 2.008 Form, Function, & Utility 38

 2.009 Reformation and Severability 38

 2.010 Consents and Approvals 38

 2.011 No Waiver of Default 38

 2.012 Survival 38

2.020 Contract Administration 38

 2.021 Issuing Office 38

 2.022 Contract Compliance Inspector 38

 2.023 Project Manager 39

 2.024 Change Requests 39

 2.025 Notices 39

 2.026 Binding Commitments 39

 2.027 Relationship of the Parties 40

 2.028 Covenant of Good Faith 40

 2.029 Assignments 40

2.030 General Provisions 40

 2.031 Media Releases 40

 2.032 Contract Distribution 40

 2.033 Permits 40

 2.034 Website Incorporation 40

 2.035 Future Bidding Preclusion 41

 2.036 Freedom of Information 41

 2.037 Disaster Recovery 41



2.040 Financial Provisions 41

2.041 Fixed Prices for Services/Deliverables..... 41

2.042 Adjustments for Reductions in Scope of Services/Deliverables 41

2.043 Services/Deliverables Covered 41

2.044 Invoicing and Payment – In General 41

2.045 Pro-ration..... 42

2.046 Antitrust Assignment 42

2.047 Final Payment..... 42

2.048 Electronic Payment Requirement..... 42

2.050 Taxes 42

2.051 Employment Taxes..... 42

2.052 Sales and Use Taxes 42

2.060 Contract Management..... 42

2.061 Contractor Personnel Qualifications..... 42

2.062 Contractor Key Personnel 42

2.063 Re-assignment of Personnel at the State’s Request 43

2.064 Contractor Personnel Location – Deleted – NA 43

2.065 Contractor Identification 43

2.066 Cooperation with Third Parties..... 43

2.067 Contractor Return of State Equipment/Resources..... 43

2.068 Contract Management Responsibilities..... 44

2.070 Subcontracting by Contractor 44

2.071 Contractor Full Responsibility..... 44

2.072 State Consent to Delegation 44

2.073 Subcontractor Bound to Contract..... 44

2.074 Flow Down..... 44

2.075 Competitive Selection..... 44

2.080 State Responsibilities 44

2.081 Equipment 44

2.082 Facilities – Deleted – NA 44

2.090 Security 45

2.091 Background Checks 45

2.092 Security Breach Notification 45

2.100 Confidentiality..... 45

2.101 Confidentiality..... 45

2.102 Protection and Destruction of Confidential Information..... 45

2.103 Exclusions 46

2.104 No Implied Rights 46

2.105 Respective Obligations..... 46

2.110 Records and Inspections..... 46

2.111 Inspection of Work Performed..... 46

2.112 Examination of Records 46

2.113 Retention of Records..... 46

2.114 Audit Resolution 47

2.115 Errors..... 47

2.120 Warranties 47

2.121 Warranties and Representations..... 47

2.122 Warranty of Merchantability – Deleted – NA 48

2.123 Warranty of Fitness for a Particular Purpose – Deleted – NA..... 48

2.124 Warranty of Title – Deleted – NA..... 48

2.125 Equipment Warranty – Deleted – NA 48

2.126 Equipment to be New – Deleted – NA 48

2.127 Prohibited Products – Deleted – NA..... 48

2.128 Consequences For Breach..... 48

2.130 Insurance..... 48

2.131 Liability Insurance..... 48

2.132 Subcontractor Insurance Coverage..... 50

2.133 Certificates of Insurance and Other Requirements 50



2.140 Indemnification 50

2.141 General Indemnification 50

2.142 Code Indemnification..... 50

2.143 Employee Indemnification 51

2.144 Patent/Copyright Infringement Indemnification 51

2.145 Continuation of Indemnification Obligations 51

2.146 Indemnification Procedures 51

2.150 Termination/Cancellation 52

2.151 Notice and Right to Cure 52

2.152 Termination for Cause 52

2.153 Termination for Convenience 52

2.154 Termination for Non-Appropriation 53

2.155 Termination for Criminal Conviction 53

2.156 Termination for Approvals Rescinded 53

2.157 Rights and Obligations upon Termination 53

2.158 Reservation of Rights 54

2.160 Termination by Contractor – Deleted – NA 54

2.170 Transition Responsibilities 54

2.171 Contractor Transition Responsibilities..... 54

2.172 Contractor Personnel Transition..... 54

2.173 Contractor Information Transition..... 54

2.174 Contractor Software Transition..... 54

2.175 Transition Payments..... 54

2.176 State Transition Responsibilities 54

2.180 Stop Work..... 55

2.181 Stop Work Orders..... 55

2.182 Cancellation or Expiration of Stop Work Order 55

2.183 Allowance of Contractor Costs 55

2.190 Dispute Resolution 55

2.191 In General..... 55

2.192 Informal Dispute Resolution 55

2.193 Injunctive Relief 56

2.194 Continued Performance 56

2.200 Federal and State Contract Requirements 56

2.201 Nondiscrimination 56

2.202 Unfair Labor Practices 56

2.203 Workplace Safety and Discriminatory Harassment..... 56

2.204 Prevailing Wage – Deleted – NA..... 56

2.210 Governing Law..... 56

2.211 Governing Law 56

2.212 Compliance with Laws..... 57

2.213 Jurisdiction..... 57

2.220 Limitation of Liability 57

2.221 Limitation of Liability 57

2.230 Disclosure Responsibilities 57

2.231 Disclosure of Litigation 57

2.232 Call Center Disclosure..... 58

2.233 Bankruptcy..... 58

2.240 Performance..... 58

2.241 Time of Performance..... 58

2.243 Liquidated Damages – Deleted – NA 58

2.244 Excusable Failure..... 59

2.250 Approval of Deliverables – Deleted – NA 59

2.260 Ownership 59

2.261 Ownership of Work Product by State 59

2.262 Vesting of Rights 59

2.263 Rights in Data 60

2.264 Ownership of Materials..... 60



2.270 State Standards 60

 2.271 Existing Technology Standards..... 60

 2.272 Acceptable Use Policy..... 60

 2.273 Systems Changes 60

2.280 Extended Purchasing – Deleted – NA 60

2.290 Environmental Provision 60

 2.291 Environmental Provision..... 60

2.300 Other Provisions..... 62

 2.311 Forced Labor, Convict Labor, Forced or Indentured Child Labor, or Indentured Servitude Made
 Materials 62

Appendix A – Price Proposal **63**



DEFINITIONS

General and Contract-Related Definitions

24x7x365 means 24 hours a day, seven days a week, and 365 days a year (including the 366th day in a leap year).

Additional Service means any Services within the scope of this Contract, but not specifically provided under any Statement of Work.

Audit Period means the seven year period following Contractor's provision of any work under this Contract.

Bidder(s) are those companies that submitted a proposal in response to the RFP.

Business Day means any day other than a Saturday, Sunday or State-recognized legal holiday from 8:00 a.m. EST through 5:00 p.m. EST unless otherwise stated.

Blanket Purchase Order is an alternate term for Contract and is used in the Plan Sponsors' computer system.

CCI means Contract Compliance Inspector.

Days mean calendar days unless otherwise specified.

Deleted – NA means that section is not applicable or included in this Contract. This is used as a placeholder to maintain consistent numbering.

Deliverable means physical goods and/or services required or identified in a Statement of Work.

DMB means the Michigan Department of Management and Budget.

Environmentally Preferable Products means a product or service that has a lesser or reduced effect on human health and the environment when compared with competing products or services that serve the same purpose. Such products or services may include, but are not limited to: those which contain recycled content, minimize waste, conserve energy or water, and reduce the amount of toxics either disposed of or consumed.

Hazardous Material means any material defined as hazardous under the latest version of federal Emergency Planning and Community Right-to-Know Act of 1986 (including revisions adopted during the term of the Contract).

Incident means any interruption in any function performed for the benefit of a Plan Sponsor.

Key Personnel means any personnel identified in **Section 1.031** as Key Personnel.

New Work means any Services/Deliverables outside the scope of the Contract and not specifically provided under any Statement of Work, such that once added will result in the need to provide the Contractor with additional consideration. "New Work" does not include Additional Service.

Ozone-depleting Substance means any substance the Environmental Protection Agency designates in 40 CFR part 82 as: (1) Class I, including, but not limited to, chlorofluorocarbons, halons, carbon tetrachloride, and methyl chloroform; or (2) Class II, including, but not limited to, hydrochlorofluorocarbons.

Post-Consumer Waste means any product generated by a business or consumer which has served its intended end use; and which has been separated or diverted from solid waste for the purpose of recycling into a usable commodity or product, and which does not include post-industrial waste.

Post-Industrial Waste means industrial by-products which would otherwise go to disposal and wastes generated after completion of a manufacturing process, but does not include internally generated scrap commonly returned to industrial or manufacturing processes.



Recycling means the series of activities by which materials that are no longer useful to the generator are collected, sorted, processed, and converted into raw materials and used in the production of new products. This definition excludes the use of these materials as a fuel substitute or for energy production.

Reuse means using a product or component of municipal solid waste in its original form more than once.

RFP means a Request for Proposal designed to solicit proposals for services.

Services means any function performed for the benefit of the State.

SLA means Service Level Agreement.

Source Reduction means any practice that reduces the amount of any hazardous substance, pollutant, or contaminant entering any waste stream or otherwise released into the environment prior to recycling, energy recovery, treatment, or disposal.

State Location means any physical location where the State performs work. State Location may include state-owned, leased, or rented space.

Subcontractor means a company selected by the Contractor to perform a portion of the Services, but does not include independent contractors engaged by Contractor solely in a staff augmentation role.

Unauthorized Removal means the Contractor's removal of Key Personnel without the prior written consent of the State.

Waste Prevention means source reduction and reuse, but not recycling.

Pollution Prevention means the practice of minimizing the generation of waste at the source and, when wastes cannot be prevented, utilizing environmentally sound on-site or off-site reuse and recycling. The term includes equipment or technology modifications, process or procedure modifications, product reformulation or redesign, and raw material substitutions. Waste treatment, control, management, and disposal are not considered pollution prevention, per the definitions under Part 143, Waste Minimization, of the Natural Resources and Environmental Protection Act (NREPA), 1994 PA 451, as amended.

Work in Progress means a Deliverable that has been partially prepared, but has not been presented to the State for Approval.

Work Product refers to any data compilations, reports, and other media, materials, or other objects or works of authorship created or produced by the Contractor as a result of an in furtherance of performing the services required by this Contract.

Definitions Related to Background and Scope of Work

AG means the Michigan Office of Attorney General.

BAA means Business Associate Agreement, a requirement within HIPAA intended for the protection of personal health information.

CER means a Confinement Expense Request, a form used to document expenses related to a mother's pregnancy and her child's birth.

CFR means the Code of Federal Regulations – a repository of promulgated regulations that relate to federal law.

CHAMPS means the Community Health Automated Medicaid Processing System – Michigan's Medicaid Management Information System.

CHAMPUS means the Civilian Health and Medical Program of the Uniformed Services – the former name for TRICARE.



CHP means County Health Plan – county-operated health plans that deliver services to low-income, uninsured and primarily childless adults not eligible for Medicaid in Michigan. The health plans receive funding through a CMS-approved Adult Benefits Waiver.

CMS means the Centers for Medicare & Medicaid Services, within the US Department of Health and Human Services – the federal agency responsible for Medicaid.

CP means Custodial Parent – the parent caring for a child subject to a child support order.

CRN means Claim Reference Number (same as a Transaction Control Number) and is used by the Michigan Department of Community Health to identify provider claims.

CSHCS means Children's Special Health Care Services – a program of health care and supportive services for children with qualifying medical conditions authorized by Title V of the Social Security Act.

DEERS means the Department of Defense Enrollment Eligibility Reporting System – a computerized data base of military sponsors, families and others entitled under the law to TRICARE benefits.

DCH means the Michigan Department of Community Health.

DHS means the Michigan Department of Human Services.

DRA means the Deficit Reduction Act, 2005 – a federal law that in part requires states to have laws in place clarifying a state Medicaid agency's right of recovery against any third party legally responsible for payment of a health care claim and the responsibility of legally liable third parties to provide the Medicaid agency with data about their covered beneficiaries.

FOC means Friend of the Court, the county-based entity responsible for conducting Title IV-D activities in Michigan under the direction of the Supreme Court and the Office of Child Support within the Department of Human Services.

GIQD means General Inquiry of DEERS – a means to identify coverage information related to TRICARE beneficiaries.

HIPAA means the Health Insurance Portability and Accountability Act, 1996. Among other provisions, this federal law established requirements for the protection of personal health information and mandated the use of standardized and electronic coding configurations and claim formats for health care services.

IRMA means Image Repository for Michigan Agencies – a storage site for scanned documents, including selected Medicaid paid claims.

MCL means Michigan Compiled Laws – a repository of Michigan laws.

MCO means Managed Care Organization – a term that includes Health Maintenance Organizations.

Medicaid means the health care program for categorically eligible low-income persons authorized by Title XIX of the Social Security Act. The program is administered by the state but jointly funded by the federal government.

Medicare means the health insurance program for elderly and disabled persons authorized by Title VIII of the Social Security Act. The program is funded by the federal government and administered by contracted intermediaries.

MiCSES means the Michigan Child Support Enforcement System.

MMIS means the Medicaid Management Information System, the operating system used to administer the Medicaid program in Michigan.

MSA means the Medical Services Administration, within the Michigan Department of Community Health. The MSA is responsible for administration of the Medicaid Program in Michigan.



NCP means Non-Custodial Parent – the parent with whom a child under a child support order does not reside who is responsible through the order to provide support for the child.

NCPDP means the National Council for Prescription Drug Programs and is used in reference to required claim formats for prescription drug services.

NMSN means the National Medical Support Notice, mailed to the employer of a parent required by a child support order to provide insurance benefits for his or her child(ren).

OCS means the Office of Child Support, within the Michigan Department of Human Services. The OCS is responsible for administration of the Title IV-D Medical Support Enforcement Program in Michigan.

OCSE means the federal Office of Child Support Enforcement within the United States Department of Health and Human Services, Administration for Children & Families.

PCRS means the Paternity and Casualty Recovery System utilized for selected Medicaid TPL functions.

PPRS means the Post Payment Recovery System utilized for selected Medicaid TPL functions.

TCN means the Transaction Control Number (same as a Claim Reference Number) and is used by the Michigan Department of Community Health to identify provider claims.

TCRS means the Michigan Traffic Crash Report System – a repository of police reports related to automobile accidents.

TEQ means Trauma Edit Questionnaire – a document used to solicit information related to accidents or injuries suffered by Medicaid beneficiaries.

TPL means Third Party Liability.

TRICARE means the health care program for active duty service members, National Guard and Reserve members, retirees, their families, survivors and certain former spouses worldwide – formerly called CHAMPUS.

USC means United States Code – a repository of federal laws.

WCA means Workers Compensation Agency in the Michigan Department of Energy, Labor and Economic Growth.



Article 1 – Statement of Work (SOW)

1.010 Project Identification

1.011 Project Request

This is a Contract for the provision of activities associated with Medicaid Third Party Liability (TPL) cost avoidance and recoveries for the Michigan Department of Community Health (DCH). This Contract also addresses specified activities associated with the location of commercial health insurance coverage for children under the purview of the Office of Child Support (OCS) within the Michigan Department of Human Services (DHS).

1.012 Background

A. Introduction – Medicaid and Children’s Health Care Services

The Michigan DCH is the designated single state agency responsible for administering the Medical Assistance (Title XIX – Medicaid) program in the state and, among other programs, is also responsible for administering the state’s Children’s Special Health Care Services (Title V – CSHCS) program. Within DCH, the Medical Services Administration’s Bureau of Medicaid Financial Management and Administrative Services, Third Party Liability Division has responsibility for performing the TPL function, which relates not only to Medicaid (the largest program administered by DCH) and CSHCS, but to other smaller programs as well. Any subsequent reference to “Medicaid” in this Contract applies, as appropriate, to all health care programs under the purview of DCH and the Bureau of Medicaid Financial Management and Administrative Services, Third Party Liability Division.

The TPL function involves identifying and maximizing reimbursement from third party payers for expenditures made on behalf of Medicaid beneficiaries. The definition of third party payer for this purpose includes, but is not limited to, health insurers, commercial health maintenance organizations, nonprofit health care corporations, commercial managed care corporations or organizations, and preferred provider organizations, along with third party administrators and pharmacy benefit managers. The definition also includes TRICARE (formerly called CHAMPUS). In addition, the definition includes automobile insurance carriers, workers’ compensation insurance companies, and general liability insurers. DCH is seeking to supplement its Medicaid program cost avoidance and recovery efforts by entering into one or more Contracts for the identification of additional coverage sources and the recovery of payments made by Medicaid from the liable third parties.

Under federal law, a state’s Medicaid program is the payer of last resort, and although Medicaid beneficiaries or their authorized representatives are required as a condition of eligibility to provide information regarding the availability of third party resources, it is the role of the state’s TPL program to identify potentially liable payers and to recoup from them covered costs that have been paid by the Medicaid program or, based on established criteria, from the providers of service. Timely identification of these potentially liable payers also permits the Medicaid program to avoid inappropriate payments when adjudicating claims for services and is considered a very high priority for DCH.

The majority of Michigan’s Medicaid beneficiaries are enrolled in one of several managed care organizations (MCOs) under contract to DCH. These Medicaid-contracted MCOs are required as a condition of their contract to implement appropriate measures for cost avoidance and recovery to maximize reimbursement from liable third party resources. To assist them, DCH regularly provides an electronic file containing known insurance coverage information as well as other documents that identify potential opportunities for recovery.

Federal laws and regulations pertaining to a state’s TPL program and relevant to this Contract include, but are not limited to, Sections 1902, 1906 and 1917 of the Social Security Act within the United States Code (42 USC 1396a, 1396e and 1396p, respectively) and regulations in the Code of Federal Regulations at 42 CFR 433.135 through 433.154. These citations may be viewed by accessing the following site: <http://www.gpoaccess.gov/index.html>. The Deficit Reduction Act (DRA) of 2005 as well as the Health Insurance Portability and Accountability Act (HIPAA) of 1996 are also pertinent to activities included in this Contract. Additional federal guidance related to TPL requirements is available in the State Medicaid Manual, Part 3 (CMS Pub. 45), as issued and maintained by the Centers for Medicare & Medicaid Services (CMS), an agency within the US Department of Health and Human Services. This manual may be viewed by accessing the following site: <http://www.cms.hhs.gov/Manuals/PBM/list.asp>.



Michigan laws pertaining to the Medicaid TPL program and relevant to this Contract appear in the Michigan Compiled Laws (MCL) and include, but are not limited to, MCL 400.106, 400.111a and 400.112a. Also relevant to this Contract is Public Act 593 of 2006, incorporated as MCL 550.281 through 550.289 and Public Act 421 of 2009, incorporated as MCL 400.602 et seq. These citations may be viewed by accessing the following site:

[http://www.legislature.mi.gov/\(S\(24soso55zvwfpp45ifvohjyt\)\)/mileg.aspx?page=Home](http://www.legislature.mi.gov/(S(24soso55zvwfpp45ifvohjyt))/mileg.aspx?page=Home). Additional Medicaid program policies and required procedures are contained in the Michigan Medicaid Provider Manual and its supplemental bulletins, which may be accessed at the following site: http://www.michigan.gov/mdch/0,1607,7-132-2945_5100-87572--,00.html.

B. Introduction – Office of Child Support

The OCS within the Michigan DHS and the Friends of the Court (FOCs) within the County Circuit Courts administer the Title IV-D Medical Support Enforcement Program in Michigan. These agencies, along with others, rely on the automated Michigan Child Support Enforcement System (MiCSES) to support their activities and to assure coordination and information sharing related to enforcement of child support orders. The IV-D Medical Support Enforcement Program enforces court ordered child support requirements, including the requirement that, where medical insurance is available for a child at a reasonable cost, the child must be enrolled as a beneficiary of the available insurance.

DHS has a cooperative agreement with DCH through which some of the state's obligations under Title IV-D to enforce medical support requirements of child support orders are performed as part of the Medicaid TPL function. DCH is seeking to supplement the current process used by entering into a contract for the identification and location of insurance coverage as well as processing National Medical Support Notices (NMSNs) initiated by child support program staff.

Federal laws and regulations pertaining to a state's Title IV-D obligations and relevant to this Contract include, but are not limited to, Sections 451 through 469B of the Social Security Act (42 USC 451 et seq.), with special emphasis on Section 666(19), and regulations at 45 CFR 301 through 305 and at 42 CFR 433. These citations may be viewed by accessing the following site: <http://www.gpoaccess.gov/index.html>. Additional federal guidance related to Title IV-D requirements is available in documents issued by the Office of Child Support Enforcement (OCSE) within the US Department of Health and Human Services' Administration for Children & Families, which may be viewed by accessing the following site: <http://www.acf.hhs.gov/programs/cse>.

Michigan laws pertaining to the state's obligations under Title IV-D and relevant to this Contract include, but are not limited to, MCL 552.601 through 552.650. State law pertaining to the obligations of fathers of children born out of wedlock to reimburse the Medicaid program for reasonable and necessary expenses related to the mother's pregnancy and birth of the child appear at MCL 722.712. These citations may be viewed by accessing the following site:

[http://www.legislature.mi.gov/\(S\(24soso55zvwfpp45ifvohjyt\)\)/mileg.aspx?page=Home](http://www.legislature.mi.gov/(S(24soso55zvwfpp45ifvohjyt))/mileg.aspx?page=Home). Additional program policies and required procedures are contained in the Michigan Child Support Manual that, along with related documents, may be accessed at the following site: <http://www.mfia.state.mi.us/olmweb/ex/html>.

C. Relevant Statistics

There are approximately 1.7 million Medicaid eligible beneficiaries in Michigan, and total Medicaid expenditures in Fiscal Year (FY) 2008 were \$8.74 billion. Approximately 1.1 million of these beneficiaries are enrolled and receiving their health care services through a risk-based Medicaid-contracted MCO. The 14 Medicaid-contracted MCOs collectively provide services in all but one county of the state. The beneficiaries not enrolled in these MCOs are primarily those who are dually eligible for Medicare (about 200,000), although DCH intends to allow some of the duals to enroll in managed care in the future. Also not enrolled in the Medicaid-contracted MCOs are those beneficiaries who have just received their eligibility for Medicaid and have not yet chosen an MCO or are only eligible for Medicaid after satisfying a monthly spend down (about 175,000). Other beneficiaries not enrolled in Medicaid-contracted MCOs may have received an exemption from enrollment due to medical reasons, reside in an institution or participate in a home and community-based services program or reside in a county where there is no Medicaid-contracted MCO or only one Medicaid-contracted MCO available and have chosen to receive their care on a fee-for-service basis (about 75,000). There are other groups of Medicaid beneficiaries not enrolled in the Medicaid-contracted MCOs, but these are the major categories.

Of the total Medicaid population, approximately 100,000 beneficiaries have other health insurance resources, excluding Medicare, available to pay for medical services. During FY 2010 it is projected that the Contractor will have the opportunity to identify and initiate recoveries from these resources of approximately \$10.4 million.

Through DCH's Medicaid TPL efforts in FY 2008, more than \$4 million in Medicaid program expenditures were recovered from liable third parties related to automobile accidents, employment-related injuries or other general liability claims. More than 44,000 Trauma Edit Questionnaires were mailed to beneficiaries.



During FY 2008, Credit Balance/Overpayment Audits were conducted for 74 of the state's 144 hospitals, resulting in the recovery of more than \$827,000 in Medicaid program expenditures. Each audit covered multiple years.

There are more than 1.7 million children covered by child support orders in Michigan and under the purview of the Office of Child Support Services in DHS. During 2008, more than 400,000 National Medical Support Notices (NMSNs) mailed to employers in an effort to identify health coverage for these children were returned to the State's contractor by participating FOCs. The contractor assured that information from the NMSNs was updated into the MiCSES. The 34 currently participating FOCs (out of a total of 83) represent counties with about 70 percent of the state's population.

D. Estate Recovery

Federal Medicaid law and regulations require Michigan to establish a program to recover the cost of medical services paid by Medicaid and received by certain beneficiaries prior to their death. This estate recovery program is not yet in place, but will be implemented following approval of an amendment to the State Plan for Medical Assistance in Michigan that is still under review by CMS. Estate recovery is being included as a specific activity in this Contract because programmatic responsibility for the state's Medicaid estate recovery program will come under the purview of the Bureau of Medicaid Financial Management and Administrative Services, Third Party Liability Division within DCH's Medical Services Administration.

The federal laws and regulations pertaining to a state's estate recovery program and relevant to this Contract include, but are not limited to, Sections 1902(a)(18) and 1917(b) of the Social Security Act (42 USC 1396a(a)(18) and 42 USC 1396p(b), respectively), as amended by the Deficit Reduction Act (DRA) of 2005 (Public Law 109-171), and regulations at 42 CFR 433.138 and 433.139. These citations may be viewed by accessing the following site: <http://www.gpoaccess.gov/index.html>. Additional federal guidance related to estate recovery requirements is available in the State Medicaid Manual, Part 3 (CMS Pub. 45), as issued and maintained by CMS. This manual may be viewed by accessing the following site: <http://www.cms.hhs.gov/Manuals/PBM/list.asp>.

Michigan laws pertaining to estate recovery in the Medicaid program and relevant to this Contract include, but are not limited to, Public Act 74 of 2007, incorporated as MCL 400.112g through 400.112k, and Public Act 73 of 2007, incorporated as MCL 700.3805. These citations may be viewed by accessing the following site: [http://www.legislature.mi.gov/\(S\(24soso55zvfwpp45ifvohjyt\)\)/mileg.aspx?page=Home](http://www.legislature.mi.gov/(S(24soso55zvfwpp45ifvohjyt))/mileg.aspx?page=Home). Additional Medicaid program policies and required procedures will be included in the Michigan Medicaid Provider Manual after the State Plan amendment is approved.

1.020 Scope of Work and Deliverables

1.021 In Scope

The in scope work and deliverables associated with this Contract can be summarized broadly as the following Activities:

- A. Health Insurance Cost Avoidance and Recovery
- A.1 Medical Support Enforcement – Insurance Eligibility Matching
- B. Paternity Confinement Expense
- C. Court Originated Liability
- D. Hospital Credit Balance/Overpayment Audits
- E. Estate Recovery
- F. Medical Support Enforcement – National Medical Support Notices
- G. Potential Third Party Liability Activities
- H. Program Integrity

The Contractor must limit use of the information obtained from DCH, DHS or any other source to only purposes directly related to the requirements in the Contract. Information obtained by a Contractor for multi-purpose use through a voluntary agreement with an organization, such as health insurance coverage information from a national insurer or other business entity responsible for payment of health care claims, will not be subject to this limitation.

Any timeframes related to the performance of tasks or provision of reports, files, or other documents not specifically identified in this Contract will be mutually determined between DCH and the Contractor following Contract award. Any technical record or report format or any data base design not specifically identified in this Contract will also be mutually determined between DCH and the Contractor.



1.022 Work and Deliverable

The Contractor must provide Deliverables/Services and staff, and otherwise do all things necessary for or incidental to the performance of the work required by this Contract. There are multiple Activities included in this Contract. The State also reserves the right to withhold one or more Activities and perform the function with State employees.

Activity A. Health Insurance Cost Avoidance and Recovery

Cost Avoidance – Eligibility Matching

Assuring that Medicaid is the payer of last resort is the primary objective of the TPL function and cost avoidance, by locating health insurance coverage primary to Medicaid and not paying a provider's claim when another payer is liable, is a critical component. Accordingly, one of the core activities of the TPL program within DCH involves the identification and verification of health insurance benefits for Medicaid beneficiaries. This occurs primarily through a comparative review of a file that identifies Medicaid beneficiaries with other sources of health insurance coverage.

Commercial Health Insurers, Managed Care Organizations and Third Party Administrators

Historically, the task of identifying health care coverage by commercial health insurers and commercial managed care organizations (MCOs) was accomplished through efforts by the Contractor to enter into agreements with the business entities responsible for payment of health care claims, including third party administrators. While these efforts are still encouraged as a part of this Contract, especially for national payers, passage of recent legislation in Michigan makes such efforts less necessary as far as Michigan payers are concerned.

1. Public Act 593 of 2006 (MCL 550.281 through 550.289), which became effective January 3, 2007, requires each Entity responsible for payment of health care claims and doing business in Michigan to provide to DCH the data necessary to determine whether a beneficiary of that Entity's health coverage program(s) is also enrolled in the Medicaid program. The submitted files must be in a format and include specified data elements established by DCH. If a beneficiary is covered and the health coverage information is verified, it is subsequently added to DCH's TPL Coverage File for future cost avoidance and use in recovering any payments for which another payer is liable. The coverage information is also shared with Medicaid-contracted MCOs as appropriate. If the Medicaid program made payment for a service before that coverage became known to DCH, by law the Entity must accept and process a claim from or on behalf of DCH for any covered service rendered within the previous three years.

Entities may formally object to complying with provisions in the law, including both submission of their subscriber files and payment of claims, and there are administrative mechanisms in DCH to hear these objections. However, to encourage compliance by the Entities, DCH has not and does not intend to demand that the Entities' submitted subscriber files adhere to a specified standard format as long as they contain the required elements.

Michigan law defines "Entity" as a health insurer; health maintenance organization; nonprofit health care corporation; managed care corporation; preferred provider organization; organization operating pursuant to the prudent purchaser act codified at MCL 550.51 through 550.63; self-funded health plan; professional association, trust, pool, union or fraternal group offering health coverage; system of health care delivery and financing operation pursuant to MCL 500.3573 and a third party administrator. The definition of Entity extends to insurers that offer dental and vision benefits, and the reference to third party administrator includes pharmacy benefit managers working on behalf of other organizations included under the definition. The law does not, however, extend to the federal Medicare or TRICARE program.

Blue Cross Blue Shield of Michigan (BCBSM) will not be required to submit its coverage file to the Contractor. On a monthly basis, DCH sends a recipient file to BCBSM and receives a matched output file from BCBSM. State staff performs any required follow up to verify coverage information.

2. Entities will be advised to submit their monthly files to the Contractor. The Contractor must accept the files containing health care insurance information about subscribers and beneficiaries provided by these Entities. The Contractor is precluded from demanding that the submitted files comply with a specified standard format of its own choosing.

3. DCH will provide a single file, called for purposes of this Contract, the "Consolidated File," to the Contractor every eight weeks, or more frequently if determined appropriate. The file will include eligibility information for all Medicaid beneficiaries. In addition to identifying Medicaid beneficiaries with no known health insurance coverage, the file will include those Medicaid beneficiaries with health insurance coverage for purposes of recovery as explained in the Recovery Section. The Consolidated File may also include information about children for whom medical support orders have been issued and for whom health insurance coverage is not known.



The Contractor must match the health insurance coverage information provided by the Entities and any other payers with which the Contractor has voluntary agreements with information on the Consolidated File. DCH will also provide to the Contractor a file that lists all insurance carriers with which DCH has interacted, with a numeric identifier for each. The Contractor must utilize these numeric identifiers when referencing the carriers.

4. The Contractor must perform the matching process and related functions included under this Activity for any Entity until such time that DCH determines it appropriate to instead perform a direct match with the Entity, should that occur during the period of this Contract.

5. Although Entities that offer a vision-only benefit or third party administrators responsible for payment of claims for such benefits may submit their beneficiary files to the Contractor to assure their compliance with State law, the Contractor must not perform the matching and verification processes included in this task for such files. The State's use of a volume purchase Vendor for eyewear makes this activity not cost effective. However, should an Entity that offers medical benefits also offer vision coverage in its medical benefit package, that information is included in the scope of work for this task.

6. Should the Contractor receive a formal objection notice from an Entity to any of the data submission or verification requirements within this activity, the objection notice must be forwarded to DCH within two business days of its receipt. The Contractor must attach to the notice any pertinent documentation in its possession.

7. On a monthly basis, the Contractor must provide to DCH a report identifying the Entities that have submitted files of their covered beneficiaries to the Contractor. As an addendum to this report, the Contractor must indicate whether any of the files were not provided in the DCH technical record format or lacked the required data elements.

8. The Contractor must develop an appropriate matching protocol, acceptable to DCH that explains how information on the Consolidated File will be matched with files from the Entities and other payers.

9. The Contractor must, within eight weeks (56 calendar days) of receiving the Consolidated File from DCH, perform the matching process with health insurance coverage files provided by Entities and other payers. For Medicaid beneficiaries, the Contractor must during this same eight-week period also verify any potential health insurance coverage determined through the matching process. The Contractor must provide, weekly, a Consolidated Response File that reflects verified new health insurance coverage during that week. The format of the Consolidated Response File will be determined by DCH. All required data elements to reflect that coverage is preferred to be provided simultaneously, e.g., information related to a coverage rider or from a pharmacy benefits manager is preferred to be provided at the same time the other health insurance information is transmitted.

A verification process may also be required for non-Medicaid eligible children on the Consolidated File for whom potential insurance coverage is identified through the matching process, but is a separate activity for purposes of this Contract. Please refer to **Activity A.1**.

For purposes of this Contract, verified health insurance coverage means that the Contractor has taken appropriate steps to look beyond the matching process to assure that the potential insurance coverage does indeed apply to the beneficiary identified and that all information reflecting that coverage, including the begin date of coverage and the end date of coverage if applicable are known and included on the Consolidated Response File.

DCH is not interested in, and will not provide payment for, any identified matches with publicly funded health plans in Michigan or any other state, such as Michigan's Medicaid-contracted MCOs (unless the coverage is through a commercial product line of the MCO) or organizations such as Michigan's County Health Plans (CHPs).

The Contractor will receive its full unit price payment for verified health insurance coverage provided on Consolidated Response Files provided within four weeks (28 days) of receiving the Consolidated File from DCH. A five percent reduction will be applied to the unit price payment for any verified coverage provided during weeks five through eight.

10. At the end of the eight-week period, the Contractor must provide to DCH a report that identifies for each Entity or other payer the number of initial matches reflecting potential coverage and the number of verified matches with the mode of verification. A second report must be provided that identifies, by beneficiary, those matches not yet verified.



11. The Contractor must implement appropriate controls to assure that health insurance coverage information provided on each Consolidated Response File does not duplicate previously provided information for a beneficiary. Should DCH identify a duplicate payment, the duplicate payment will be recovered plus an additional 50 percent of that payment from a subsequent invoice.

12. Payment will be made on a unit price basis and will include the cost associated with verifying health insurance coverage information with the Entities or other payers. Payment will be made on a beneficiary basis; however, it is expected that the Contractor's price will recognize the economies associated with simultaneously verifying health insurance coverage for multiple members of the same family, e.g., parents and children. Because cost avoidance is a critical component of the TPL function, the Contractor will be rewarded with full unit price payment for each verification of insurance coverage provided within 28 days of receiving the Consolidated File from DCH.

TRICARE

13. On at least an annual basis, on a schedule determined by the US Department of Defense, the Contractor must submit a copy of the most recent Consolidated File provided by DCH to the appropriate Defense Eligibility Enrollment Reporting System (DEERS) intermediary to determine whether any of the beneficiaries are also eligible for TRICARE benefits. The format for the submitted file must comply with requirements established by the federal department's intermediaries.

14. Upon receipt of the response file from the DEERS intermediary, the Contractor must verify the new coverage matches identified.

For purposes of this Contract, verified coverage means that the Contractor has taken appropriate steps to look beyond the matching process to assure that the potential TRICARE coverage does indeed apply to the beneficiary identified and that all information reflecting that coverage, including the begin date of coverage and the end date of coverage, if applicable, are known and included on the Consolidated Response File. Such verification may be through General Inquiry of DEERS (GIQD) queries for each beneficiary or through a proposed alternate method of verification.

15. The Contractor must, within eight weeks (56 calendar days) of receiving the response file from the DEERS intermediary, provide to DCH the verified new coverage information in a Consolidated Response File. The format of the Consolidated Response File will be determined by DCH. All required data elements to reflect that coverage is preferred to be provided simultaneously. Consolidated Response Files are to be submitted weekly to DCH reflecting coverage verified during that week.

The Contractor will receive its full unit price payment for verified coverage provided on Consolidated Response Files provided within four weeks (28 days) of receiving the response file from the DEERS intermediary. A five percent reduction will be applied to the unit price payment for any verified coverage provided during weeks five through eight.

16. At the end of the eight-week period, the Contractor must provide to DCH a report that identifies the number of initial matches reflecting potential TRICARE coverage and the number of verified matches with the mode of verification. A second report must be provided that identifies, by beneficiary, those matches not yet verified.

17. The Contractor must implement appropriate controls to assure that TRICARE coverage information provided on each Consolidated Response File does not duplicate previously provided information for a beneficiary. Should DCH identify a duplicate payment, the duplicate payment will be recovered plus an additional 50 percent of that payment from a subsequent invoice.

18. Payment will be made on a unit price basis and will include the cost associated with verifying TRICARE coverage information through GIQD queries or an alternative method if proposed. Payment will be made on a beneficiary basis; however, it is expected that the Contractor's price will recognize the economies associated with simultaneously verifying coverage for multiple members of the same family, e.g., parents and children. Because cost avoidance is a critical component of the TPL function, the Contractor will be rewarded with full unit price payment for each verification of coverage provided within 28 days of receiving the response file from the DEERS intermediary.

Recovery

Assuring that recoveries are made from liable third parties, including all Entities as defined at MCL 550.281, for payments already made by Medicaid once new health insurance coverage has been identified is a critical component of the TPL function.



Commercial Health Insurers, Managed Care Organizations and Third Party Administrators

19. Upon receipt by DCH of the Contractor's completed Consolidated Response Files or at the end of the eight-week period, whichever comes first, DCH will provide a paid claims file to the Contractor. DCH will also provide a file identifying those State-controlled claims for which the Contractor must not pursue recovery.

The Contractor must determine which claims must be submitted to liable third parties. This review must consider whether the claims have previously been submitted, but not yet adjudicated, have been submitted and rejected or, based on other information available to the Contractor, are for services not covered by the third party.

20. The Contractor must submit all claims to the liable third parties in formats compliant with provisions in federal law and regulations – specifically the Health Insurance Portability and Accountability Act (HIPAA) of 1996 and federal regulations at 45 CFR 162.920, as amended – unless a third party requires a proprietary format. It is expected that claims will be submitted to the liable third parties within one week of the Contractor's receipt of the paid claims file.

21. The Contractor must establish an electronic Adjudication Data Base of all claims received from DCH for which recoveries from liable third parties have been initiated, with claim detail and actions taken. DCH will work with the Contractor to develop the format and data elements for the data base. Specified DCH staff must have ongoing access to it. The Adjudication Data Base will include, at a minimum, identifiers for the beneficiaries and providers of service, claim identifiers and the DCH-specified carrier identifiers for the third parties to which recovery claims have been submitted.

The Contractor must use the Adjudication Data Base to produce, monthly, an electronic Adjudication File for DCH, which will include all adjudication information, with dates that actions occurred, including payments at the claim line level. All claim information must be presented in ASC X12N 835, NCPDP 5.1, or another format established by DCH, as appropriate. The monthly file must also identify, for any claim rejected for payment in whole or in part, the reason for the rejection with detail to identify what portion of the claim was rejected.

Any claim rejected due to technical errors must be resubmitted to the liable third party within 14 days of receiving the rejection notice, with the rejection and resubmission noted on the Adjudication Data Base and included on the monthly Adjudication File. In addition to the monthly file, the Contractor must provide a companion report that identifies those claims resubmitted to a third party due to technical errors and not yet adjudicated.

The Contractor must advise and assure that all liable third parties make payments to the "State of Michigan." All payments must be directed to and deposited in a State of Michigan Lock-Box designated for the Contractor's TPL-related receipts. Should any payments be directed in error to and deposited in the Lock-Box designated for DCH's recovery-related activities, the Contractor will be notified. The Contractor must assure that all payments are posted to the Adjudication Data Base within 90 days of receipt. The Contractor will forfeit the contingency fee on any payments not posted within 90 days.

22. If, after DCH's payment to the Contractor, a liable third party identifies a legitimate error that reduces the amount due to the State, or if the Contractor subsequently determines that the amount recovered was overstated, the Contractor must notify the DCH. DCH will determine how the error must be rectified and advise the Contractor accordingly. This determination could include a requirement that the Contractor process a refund to the third party or that DCH will do so. Irrespective, the Contractor must update the Adjudication Data Base appropriately and assure that the entry correctly references how the adjusted payment to the third party affects any contingency payment already made to the Contractor.

If the Contractor is unable to resolve a claim with a liable third party after six months, the claim may be referred to DCH for pursuit of the recovery. The Contractor forfeits any contingency fee for such referrals.

23. On a monthly basis, the Contractor must provide an electronic file that identifies all claims, with the DCH-generated Claim Reference Number/Transaction Control Number (CRN/TCN), for which recoveries have been initiated. DCH will work with the Contractor to develop the format and data elements for this file. The information on this file will be loaded into DCH's Post Payment Recovery System (PPRS).

24. Payment will be made on a contingency basis, as a percentage of the amount recovered from the liable third parties. Any adjustments in the amount due to the Contractor as a result of claim corrections during the invoice month must be reflected and deducted from the monthly invoice. No payment will be made for a claim rejected by a payer. The Adjudication Data Base and the monthly Adjudication Files will be used by DCH to validate invoices submitted by the Contractor.



TRICARE

25. In a process similar to that identified above for commercial health insurers, upon receipt by DCH of the Contractor's completed Consolidated Response Files or at the end of the eight-week period, whichever comes first, the Contractor must determine from the paid claims file provided by DCH which claims must be submitted to a liable TRICARE fiscal intermediary. This review must consider whether the claims have previously been submitted, but not yet adjudicated, have been submitted and rejected or, based on other information available to the Contractor, are for services not covered by TRICARE. This review must also consider whether any claims are related to services or beneficiaries for which Medicaid is a primary payer to TRICARE.

26. The Contractor must submit all claims to TRICARE's fiscal intermediaries in formats compliant with provisions in federal law and regulations – specifically the Health Insurance Portability and Accountability Act (HIPAA) of 1996 and federal regulations at 45 CFR 162.920, as amended – and in accordance with TRICARE's requirements. It is expected that claims will be submitted to the appropriate intermediary within one week of the Contractor's receipt of the paid claims file.

27. The Contractor must utilize the electronic Adjudication Data Base established for recoveries from commercial health insurers to track all recoveries initiated from TRICARE fiscal intermediaries and include the same level of detail regarding beneficiaries, providers, claims and actions taken.

The Contractor must include adjudication information for TRICARE claims in the monthly electronic Adjudication File produced for recoveries from the commercial health insurers and submitted to DCH. The same data elements and file formats will be required. In addition to paid claims information, the monthly file must identify, for any claim rejected for payment in whole or in part, the reason for the rejection with detail to identify what portion of the claim was rejected.

Any claim rejected due to technical errors must be resubmitted to the intermediary within 14 days of receiving the rejection notice, with the rejection and resubmission noted on the Adjudication Data Base and included on the monthly file. In addition to the monthly file, the Contractor must provide a companion report that identifies those claims resubmitted to a TRICARE intermediary due to technical errors and not yet adjudicated.

The Contractor must advise and assure that the intermediaries make payments to the "State of Michigan." All payments must be directed to and deposited in a State of Michigan Lock-Box designated for the Contractor's TPL-related receipts. Should any payments be directed in error to and deposited in the Lock-Box designated for DCH's recovery-related activities, the Contractor will be notified. The Contractor must assure that all payments are posted to the Adjudication Data Base within 90 days of receipt; the Contractor will forfeit the contingency fee on any payments not posted within 90 days.

28. If after DCH's payment to the Contractor a TRICARE intermediary identifies a legitimate error that reduces the amount due to the State or if the Contractor subsequently determines that the amount recovered was overstated, the Contractor must notify the DCH. After review, DCH will process the payment adjustment to the intermediary as appropriate. The Contractor will be advised of the action, must update the Adjudication Data Base appropriately, and assure that the entry correctly references how the adjusted payment to the intermediary affects any contingency payment already made to the Contractor.

If the Contractor is unable to resolve a claim with an intermediary after six months, the claim may be referred to DCH for pursuit of the recovery. The Contractor forfeits any contingency fee for such referrals.

29. On a monthly basis, the Contractor must provide an electronic file that identifies all claims, with the DCH-generated Claim Reference Number/Transaction Control Number, for which recoveries have been initiated. DCH will work with the Contractor to develop the format and data elements for this report. The information on this file will be loaded into DCH's PPRS.

30. Payment will be made on a contingency basis, as a percentage of the amount recovered from the TRICARE fiscal intermediaries. Any adjustments in the amount due to the Contractor as a result of claim corrections during the invoice month must be reflected and deducted from the monthly invoice. No payment will be made for a claim rejected by an intermediary. The Adjudication Data Base and the monthly Adjudication Files will be used by DCH to validate invoices submitted by the Contractor.

**Activity A.1 Medical Support Enforcement – Insurance Eligibility Matching**

Federal law and regulations require state child support enforcement agencies to enforce the health care coverage provision in a child support order. The OCS within DHS complies with this requirement by periodically searching the enrollment files of major commercial health insurers, commercial managed care organizations, and third party administrators for coverage information about children included under medical support orders. Locating and obtaining health insurance coverage for these children is also consistent with DCH's obligation to assure that Medicaid is a payer of last resort because a number of the children covered by medical support orders are eligible for Medicaid. Accordingly there is a cooperative agreement between DCH and DHS regarding the tasks associated with this Activity.

1. In addition to Medicaid beneficiaries, the Consolidated File provided to the Contractor by DCH every eight weeks, or more frequently if determined appropriate, will also include information about children (and parents) when medical support orders have been issued and insurance coverage by a parent is not known.

The Contractor must, within eight weeks (56 calendar days) of receiving the Consolidated File from DCH, perform the matching process with insurance coverage files provided by Entities and other payers.

The Contractor must perform the matching process and related functions included under this Activity for any Entity until such time that DCH determines it appropriate to instead perform a direct match with the Entity, should it occur during the period of this Contract.

2. The Contractor must verify any potential health insurance coverage determined through the matching process. The Contractor must provide a Consolidated Response File to DCH weekly. DCH will determine the format of the file. All required data elements to reflect that coverage is preferred to be provided simultaneously, e.g., information related to a coverage rider or from a pharmacy benefits manager is preferred to be provided at the same time the other health insurance information is transmitted.

For purposes of this Contract, verified insurance coverage means that the Contractor has taken appropriate steps to look beyond the matching process to assure that the potential health insurance coverage does indeed apply to the child identified and that all information reflecting that coverage, including the begin date of coverage and the end date of coverage if applicable are known and included on the Consolidated Response File.

DCH is not interested in, and will not provide payment for, any identified matches with publicly funded health plans such as the Medicaid-contracted MCOs (unless the coverage is through a commercial product line of the managed care organization) or organizations such as Michigan's County Health Plans (CHP)s.

The Contractor will receive its full unit price payment for verified health insurance coverage provided on Consolidated Response Files provided within four weeks (28 days) of receiving the Consolidated File from DCH. A five percent reduction will be applied to the unit price payment for any verified coverage provided during weeks five through eight.

3. At the end of the eight-week period, the Contractor must provide to DCH a report that identifies for each insurance carrier or other payer the number of initial matches reflecting potential coverage and the number of verified matches with the mode of verification. A second report must be provided that identifies, by beneficiary, those matches not yet verified.

4. The Contractor must implement appropriate controls to assure that health insurance coverage information provided on each Consolidated Response File does not duplicate previously provided information for a child. Should DCH identify a duplicate payment, the duplicate payment will be recovered plus an additional 50 percent of that payment from a subsequent invoice.

5. Payment will be made on a unit price basis and will include the cost associated with verifying insurance coverage information with the Entities or other insurance carriers. Payment will be made on a child-specific basis; however, it is expected that the Contractor's price will recognize the economies associated with simultaneously verifying insurance coverage for multiple children in the same family. The Contractor will be rewarded with its full unit price payment for each verification of insurance coverage provided within 28 days of receiving the Consolidated File from DCH.

The Pricing reflects the full unit price payment, recognizing that it will be reduced in instances where verification does not occur until after the 28-day period has lapsed.

**Activity B. Paternity Confinement Expense**

Michigan requires the father of a child born out of wedlock to reimburse the state Medicaid program for reasonable and necessary expenses (confinement expenses) related to the mother's pregnancy and the birth of the child. This Activity is managed through DCH's electronic Paternity and Casualty Recovery System (PCRS). The PCRS is a multi-faceted system that includes information about the involved Medicaid beneficiaries, in this case the mothers and their children, as well as paid claims information.

Recent improvements by DCH have streamlined the process for identifying confinement expenses involving Medicaid expenditures and will gradually diminish the Contractor's involvement in this activity over time. The level of the Contractor's expected involvement in the activity under this Contract will vary by the date of a child's birth.

- The Contractor will be responsible for processing all Medicaid-related Confinement Expense Requests (CERs) for children born prior to October 1, 2004, including both the mothers' expenses and those of their children.
- For births on and after October 1, 2004, but prior to October 1, 2008, the Contractor will be responsible for processing Medicaid-related CERs for mothers and children receiving care on a fee for service basis.
- For births on and after October 1, 2008, it is expected that the Contractor may only be responsible for processing Medicaid-related CERs for children not enrolled in a Medicaid-contracted MCO; however, additional streamlining efforts may ultimately eliminate this work effort as well.

1. Requests to identify confinement expense amounts are generated from the Michigan Child Support Enforcement System (MiCSES) by multiple sources, including the local Friends of the Court (FOCs), local prosecutors, and staff in the DHS Office of Child Support. The requests are forwarded to DCH if the mother and/or her child(ren) were covered by Medicaid at the time of the child's birth. DCH will review the requests, determine those appropriate for referral to the Contractor and enter appropriate information into PCRS. This batch of CERs along with a listing of the documents will be given to the Contractor weekly.

To assure confidentiality of the information contained on the CERs, the Contractor must either send a courier to pick up the documents weekly or utilize trackable mail, e.g., Federal Express, to obtain the documents. If the former option is chosen, DCH and the Contractor will mutually determine the appropriate day of the week for the documents to be picked up from DCH's office in Lansing. If the latter option is chosen, the documents will be shipped to the Contractor by DCH staff with the invoices payable by the Contractor. The cost of a courier or overnight shipping will not be separately reimbursed.

2. Medicaid claims paid prior to 2001 are stored on the State's Image Repository for Michigan Agencies (IRMA) and claims paid on and after January 1, 2001 are available on PCRS. Accordingly, depending on a child's date of birth, expenditure data may be required from only one or both media.

For expenditure data on IRMA, the Contractor must locate and print Medicaid expenditure information for both the mother and the child(ren) from records contained on that medium. Any claims identified with confinement-related expenditures will be highlighted and totaled. If no records are found for a particular beneficiary identifier, the Contractor will print the page where the missing identifier should have appeared as documentation.

To retrieve expenditure data from the PCRS, the Contractor must perform a query, review the data, and select the confinement-related expenditures. If no claims are found for a particular beneficiary identifier, the Contractor will make the appropriate entry in the PCRS.

DCH will provide training to the Contractor regarding the structure and use of both the PCRS and IRMA. DCH will also provide business rules, file layouts and record descriptions necessary to perform this activity.

3. The Contractor must perform a review of the expenditure data extracted from IRMA and/or the PCRS to verify its accuracy and completeness. The Contractor must correct any errors that are identified.

The Contractor must develop a daily spreadsheet listing the beneficiary identifiers for the records processed, with separate lists for IRMA and PCRS results, in a format to be determined by DCH. The spreadsheet must be transmitted electronically via email to DCH on a weekly basis. The Contractor must also enter all appropriate information into the PCRS.



The Contractor must complete each CER document in the weekly batch by entering the confinement expenses in the appropriate spaces on the CER, and sign and date the document. The information on each CER document must match the PCRS, including the date each was completed. The CERs must be batched and delivered to DCH weekly. The Contractor may choose to deliver the batched documents via a courier or may send them via trackable mail, e.g., Federal Express, with the mailing cost borne by the Contractor.

Because these forms will be presented as legal evidence in a court of appropriate jurisdiction, a new CER must be generated if corrections are necessary. The original CER must be attached if still available.

4. Upon receipt of the completed CERs and the accompanying daily spreadsheets, DCH will review the documents, as well as the information added to the PCRS, for accuracy, completeness and consistency.

Because the CER is a legal document and will be returned to the court of appropriate jurisdiction, it is critical that it be completed correctly. As such, if errors are identified during DCH's review of the submitted documents, the Contractor may be assessed a financial penalty for that weekly batch. For purposes of the error review and penalty assessment, CERs completed through document retrieval from IRMA will be reviewed as a separate sub-group from CERs completed through queries to the PCRS. An error rate greater than five percent in either sub-group will result in a five percent reduction in payment for each CER in the sub-group of that batch.

5. The Contractor must be aware that timely processing of CERs is important. As a means to gauge CERs completed, work on hand and any backlogs, the Contractor must provide an electronic work status report to DCH. The report will identify CERs completed within identified timeframes as well as CERs received, but not yet completed within specific time parameters. Should DCH determine it appropriate at any time during this Contract period, the Contractor must modify the format, content and frequency of report submission and at no cost to DCH.

DCH may impose a financial penalty if it is determined that a substantial volume of CERs are not being processed within an acceptable time frame. DCH will work with the Contractor to identify both the volume and time frame parameters. The financial penalty will be a five percent reduction in payment for the CERs completed beyond the established time frame.

6. Payment will be made on a unit price basis, i.e., per CER returned to DCH. All costs of document transfer, of retrieving and verifying the payment information and of preparing both the spreadsheet and the CER, as well as updating the PCRS are included in the unit price.

Activity C. Court-Originated Liability

DCH is required by federal law and regulations and Michigan statute to identify Medicaid beneficiaries who have been involved in an accident or have suffered other trauma, injury, or poisoning to determine if any third parties may be legally liable for the cost of the beneficiaries' health care. Compliance with this requirement is achieved through multiple means and managed through DCH's electronic Paternity and Casualty Recovery System (PCRS). The PCRS is a multi-faceted system that includes information about the involved Medicaid beneficiaries as well as paid claims information related to any identified accident or trauma suffered. The PCRS also includes information regarding any actions taken to pursue recoveries, whether by DCH staff or a Contractor.

The purpose of this activity is to recover Medicaid expenditures for health services associated with accidents or injuries suffered by beneficiaries for which a third party may be legally liable.

The Michigan Office of the Attorney General (AG) will represent DCH in all circumstances when legal representation is necessary. DCH will establish the protocol the Contractor must use to determine and notify DCH that legal representation is necessary and/or desired. The Contractor must cooperate in this process as needed. If AG representation is requested, the Contractor will be required to provide any necessary supporting documentation. The PCRS must be updated by the Contractor to reflect this action.

DCH has established financial thresholds based on the value of paid claims below which recoveries are not considered cost effective.



Automobile Accidents

DCH requires that recovery from a liable third party for injuries to Medicaid beneficiaries resulting from an automobile accident be pursued if payments for services associated with the accident exceed \$300 during the 12 month period following the accident. Payments made subsequent to the 12 month period may also be recovered if related to the automobile accident. The recovery amount is limited to the amount paid by Medicaid for treatment of the accident-related medical condition.

1. DCH will perform a matching process with State Motor Vehicle Accident Reports available on the Michigan Traffic Crash Report System (TCRS) at least monthly to determine if any Medicaid beneficiaries have been reported as involved in injury-related automobile accidents for which police reports have been added to this system. When potential matches are identified police accident reports will be obtained. These accident reports will be made available to the Contractor along with access to the PCRS, and the Contractor will be required to research these "leads" to determine if a liable third party and an opportunity to recover funds for the Medicaid program exist.

Historically, it has often been difficult to determine an exact match due to name discrepancies on the TCRS file and the Medicaid eligibility file. However, it is expected that the match rate between the Medicaid eligibility file and the file from the TCRS will improve with DCH's implementation in the near future of a modified name field on the eligibility file – from a single field to a three-part field reflecting first, middle and last name separately.

Attorneys representing Medicaid beneficiaries in litigation involving an automobile accident are required pursuant to MCL 400.106 to advise DCH. These notices will be shared with the Contractor upon receipt if they relate to cases identified through the TCRS match process.

2. In accordance with established protocols that will be provided by DCH following award of this Contract, the Contractor will be required to utilize the PCRS as a means to track and report all activities related to recoveries. This includes updating filed recovery claims when additional accident-related expenditures appear.

The Contractor must review its open cases on the PCRS as frequently as required by the case particulars, but at least every 120 days in order to locate any additional accident-related claims. After liability has been established and all identified claims have been recovered, the case can be closed. PCRS must be appropriately updated and the physical file returned to DCH within 30 days.

The Contractor must use standard notice letter formats included in the PCRS to pursue recoveries with potentially liable automobile insurance carriers. If the Contractor believes it necessary to file a lien or notice with a court of appropriate jurisdiction to identify and make known the claim for recovery of Medicaid funds, the Contractor must advise DCH.

3. The Contractor must employ or subcontract with legal counsel licensed to practice in the State of Michigan.

4. If the Contractor encounters a problem with a potentially liable third party and is unable to effectuate recovery, the DCH must be promptly notified. Upon such notification and review the DCH may request AG representation for the case if appropriate. Similarly, should the dollar value of a claim related to a particular accident/incident exceed a threshold to be determined and DCH has not already acknowledged this fact with the Contractor, DCH must be notified and will request AG representation if appropriate.

If a case identified through the TCRS match process and researched by the Contractor is referred for AG representation, the Contractor will retain claim control and pursue recovery in coordination with DCH and the AG.

5. Payment will be made on a contingency basis, as a percentage of the amount recovered for DCH. The Contractor must provide a report that will be submitted with and support the monthly invoice. The report must be consistent with information appearing in the PCRS. Any adjustments in the amount due to the Contractor as a result of negative claim corrections during the invoice month must be reflected on the report and deducted from the monthly invoice.

Payment will not be made on any cases for which the Contractor determines through its due diligence or DCH determines that criteria for recovery are not met. Payment will also not be made on that portion of a potential recovery referred to a Medicaid-contracted MCO. Further, no payment will be made for a claim rejected by a third party. DCH will retain discretion to determine the appropriateness of any contingency payment for a case overturned in a legal proceeding.



Employment-Related Accidents or Injuries

DCH requires that recovery from liable third parties for employment-related accidents or injuries to Medicaid beneficiaries be pursued if payments for services associated with the accident or injury exceed \$300 during the 6 month period following the accident. Payments made subsequent to the 6 month period may also be recovered if the result of the employment-related accident. The recovery amount is limited to the amount paid by Medicaid for treatment of the accident or injury-related medical condition.

6. DCH will perform a matching process at least monthly with information on an electronic file maintained by the Michigan Workers' Compensation Agency (WCA) in the Department of Energy, Labor and Economic Growth to determine if any Medicaid beneficiary is identified as receiving benefits due to an employment-related accident or injury. Matches will be identified and the PCRS appropriately updated.

Through this matching process DCH will be able to determine if the company providing the workers' compensation insurance has disputed the Medicaid beneficiary's claim for benefits. For those identified beneficiaries with undisputed claims and with accumulated Medicaid payments exceeding the minimum threshold for recovery, the PCRS will be updated and the Contractor will pursue the recovery. Recoveries related to disputed claims will be handled by DCH.

7. Upon notice by DCH of an undisputed claim, the Contractor must contact the identified workers' compensation insurance company and initiate a recovery action. If, during this process, the Contractor learns that the claim has been disputed, the Contractor must notify DCH and not pursue the recovery further.

If the Contractor learns of litigation involving disputed Workers' Compensation claims through other means, e.g., through a Trauma Edit Questionnaire (TEQ), the Contractor must notify DCH and not pursue the recovery.

In accordance with DCH-established protocols that will be provided by DCH, the Contractor will be required to utilize the PCRS as a means to track and report all activities related to recoveries. This includes monitoring paid claims recorded on the PCRS to update filed recovery claims when additional accident or injury-related expenditures appear. This also includes updating the PCRS when any notice is given to DCH regarding a change in status of a claim from undisputed to disputed.

The Contractor must review its open cases on the PCRS as frequently as required by the case particulars, but at least every 120 days in order to locate any additional accident-related claims. After liability has been established and all identified claims have been recovered, the case can be closed. PCRS must be appropriately updated and the physical file returned to DCH within 30 days.

The Contractor must use standard notice letter formats included in the PCRS to pursue recoveries with companies providing the workers' compensation insurance.

8. Payment will be made on a contingency basis, as a percentage of the amount recovered for DCH. The Contractor must provide a report, in a format to be mutually determined, that will be submitted with and support the monthly invoice. The report must be consistent with information appearing in the PCRS. Any adjustments in the amount due to the Contractor as a result of negative claim corrections during the invoice month must be reflected on the report and deducted from the monthly invoice.

Payment will not be made on any cases for which the Contractor determines through its due diligence or DCH determines that criteria for recovery are not met. Payment will also not be made on that portion of a potential recovery referred to a Medicaid-contracted MCO.

Trauma Edit Questionnaires

DCH requires that recovery from liable third parties for other injuries or trauma to Medicaid beneficiaries be pursued if payments for services associated with the injury or trauma exceed \$300 during the 6 month period following the incident causing the injury or trauma. Payments made subsequent to the 6 month period may also be recovered if related to the injury or trauma. The recovery amount is limited to the amount paid by Medicaid for treatment of the injury or trauma-related medical condition

9. DCH will, at least monthly, identify paid claims reflecting diagnosis and trauma codes designated in federal regulations at 42 CFR 433.138. Paid claims with diagnosis codes identifying injury or poisoning in the range between 800 through 999 in the International Classification of Diseases, 9th Revision, Clinical Modification (ICD-9-CM) will be reviewed.



As required under federal regulations, a Trauma Edit Questionnaire (TEQ) will be generated by DCH for each beneficiary with claims that meet the injury and trauma coding requirements and for who accumulated payments exceed the minimum threshold following the date of the incident. The questionnaires will be mailed to the beneficiary or to a parent or authorized representative identified on the eligibility file. The PCRS will be updated to reflect issuance of the TEQ. The TEQ will include the Contractor's contact information for return of the document and for any questions the beneficiary might have.

The Contractor must initiate follow-up contacts with the beneficiaries or their representatives to encourage return of the completed questionnaires.

It is possible that a TEQ will be mailed to a beneficiary involved in litigation that has already been identified through other means, including the TCRS. The Contractor will be expected to reconcile any potential differences in information obtained through other sources and the TEQ received from the beneficiary in accordance with DCH-established protocols and to update the PCRS as appropriate to reflect this reconciled information.

10. For the duration of this Contract, the Contractor must provide DCH with envelopes to be included with each TEQ mailed to a Medicaid beneficiary. These envelopes must reflect the Contractor's return address. The quantity of envelopes required is estimated to be between 44,000 and 50,000 per year. Upon request the Contractor must also provide DCH with any other pertinent contact information identified by DCH for the duration of this Contract.

11. Upon receipt of a completed TEQ, the Contractor must contact the identified third party potentially liable for payment and initiate a recovery action. If the Contractor believes it necessary to file a lien or notice with a court of appropriate jurisdiction to identify and make known the claim for recovery of Medicaid funds, the Contractor must advise DCH.

Attorneys representing Medicaid beneficiaries in general liability or medical malpractice litigation are required pursuant to MCL 400.106 to advise DCH of such litigation. These notices will, if determined appropriate by DCH, be shared with the Contractor.

12. The Contractor must review its open cases on the PCRS as frequently as required by the case particulars, but at least every 120 days in order to locate any additional accident-related claims. After liability has been established and all identified claims have been recovered, the case can be closed. PCRS must be appropriately updated and the physical file returned to DCH within 30 days.

13. If a case identified through the TEQ process and researched by the Contractor is referred for AG representation, the Contractor will retain claim control and pursue recovery in coordination with DCH and the AG.

14. Payment will be made on a contingency basis, as a percentage of the amount recovered for DCH. The Contractor must provide a report that will be submitted with and support the monthly invoice. The report must be consistent with information appearing in the PCRS. Any adjustments in the amount due to the Contractor as a result of negative claim corrections during the invoice month must be reflected on the report and deducted from the monthly invoice.

Payment will not be made on any cases for which the Contractor determines through its due diligence or DCH determines that criteria for recovery are not met. Payment will also not be made on that portion of a potential recovery referred to a Medicaid-contracted MCO. Further, no payment will be made for a claim rejected by a third party or overturned in a legal proceeding.

General Provisions Applicable to all Court-Originated Liability

More than two-thirds of Michigan's Medicaid beneficiaries are enrolled in a Medicaid-contracted MCO responsible for arranging and reimbursing for their health care. It is therefore very possible that some of the costs resulting from an automobile accident, an employment-related accident, or injury or some other accident or injury may be reimbursed by these MCOs.

15. If the Contractor determines that a Medicaid beneficiary was enrolled in a Medicaid-contracted MCO for a portion of the period for which a recovery is appropriate, the Contractor must limit its recovery to the costs incurred during the period of time that the beneficiary was not enrolled in the MCO. Further, the Contractor must, within one week of learning that one of the Medicaid-contracted MCOs may also have a right to recovery, contact the MCO and provide information to enable the MCO to initiate its own recovery action.



16. Within 30 days of finalizing the recovery process for each case, the Contractor must return any physical documents associated with the recovery to DCH. The required organization of each case file will be determined by DCH.

17. The Contractor must advise and assure that any liable third parties make payments to the "State of Michigan." All payments must be directed to, and deposited in, a State of Michigan Lock-Box designated for the Contractor's TPL-related receipts. Should any payments be directed in error to, and deposited in, the Lock-Box designated for DCH's recovery-related activities, the Contractor will be notified.

Activity D. Hospital Credit Balance/Overpayment Audits

Erroneous payments made to hospitals represent a portion of TPL recoveries. In many cases, these overpayments are recorded on the books of the facilities as credit balances. Credit balances arise, in part, because of the complexity involved in managing the coordination of benefits process. For various reasons providers receive revenue from multiple sources and may have trouble reconciling accounts. Additionally, the speed at which hospitals seek payment for services and the volume of accounts their staff must manage further impede the third party payment process by causing errors in documentation. Payments to hospitals that should create refunds to state Medicaid agencies often go unresolved because provider efforts to refund overpayments are minimal and secondary to their priority financial activities – collecting accounts receivable and reducing any bad debt.

1. The objective of this activity is to identify potential overpayments through retrospective on-site audits of hospitals to assure that appropriate funds are returned to DCH. This activity does not include a review of the medical coding on claims submitted to and paid by Medicaid; it is limited to coordination of benefits and the appropriate reporting by the hospitals of payments from liable third parties to reduce the amount due from Medicaid. These liable third parties may be health insurers or other Entities defined at MCL 550.281, automobile insurance carriers, workers' compensation insurers, malpractice or general liability insurance carriers or even individuals or corporations. In addition, this activity does not include a review of claims reimbursed by Medicaid-contracted MCOs; these managed care organizations are responsible for their own coordination of benefit activities.

The Contractor must develop and implement an audit program that identifies inappropriate or erroneous payments and credit balances owed to DCH by hospitals participating in Michigan's Medicaid program. There are 144 Michigan hospitals enrolled in the Medicaid program and subject to these audits as well as a small number of hospitals located in borderland areas of states contiguous to Michigan. DCH will identify the hospitals to be audited and will indicate for each hospital any restricted time periods that cannot be audited. All potential overpayments identified must be thoroughly researched and presented to the appropriate provider representative for review before they are included in any report provided to DCH.

2. The results from each audit must be compiled in an electronic data base that will be used by both DCH and the Contractor to manage this activity. The Contractor must develop this data base in cooperation with DCH.

One function of the data base must be to generate an audit report to clearly reflect, on a claim basis, both the amount initially paid by Medicaid and the amount that should have been paid if a lesser amount. The detail to be included in, and the format for, the audit report will be mutually determined. The audit report is expected to include, at a minimum, the following data elements:

- The provider identifier for the institution;
- The hospital account number;
- The Claim Reference Number/Transaction Control Number (CRN/TCN) assigned by DCH for each claim;
- The sequence number for each involved claim;
- The dates of service (or the from and through dates if inpatient hospital claims are involved);
- The beneficiary name and identifier, as well as the beneficiary's date of birth;
- The amount paid by Medicaid and the date paid;
- The amount the hospital approved for refund; and
- An explanation or reason for the identified amount owed by the third party.

Each audit report must also identify the date the audit commenced and concluded as well as the date the audit report was finalized in the data base. The Contractor must notify DCH via email when the report is available for review. The report must be available for review by DCH no later than 30 calendar days after conclusion of the audit and the Contractor must be available to discuss with DCH staff any particulars in the report that could affect DCH's decision regarding the appropriateness of recovery.



3. DCH will use the information in the audit report to generate a notice of recovery to the hospital. The hospital will be given the opportunity to challenge (appeal) the proposed recovery amount or any errors believed to exist. The Contractor must cooperate with DCH in the review of any errors identified by the hospital and be available, if necessary, to testify in any administrative or legal proceeding resulting from a challenge of the recovery amount. DCH will initiate any recovery from the hospital and return to the Contractor a summary to be used for invoicing. A notice of the approved recovery amount will also be provided.

4. Payment will be made on a contingency basis as a percentage of any amounts recovered by DCH. The Contractor will be reimbursed the contingency amount monthly as recoveries are finalized. Payment will not be made on any cases for which the Contractor determines through its due diligence or DCH determines based on its review of the audit report that it is not appropriate to pursue recovery nor will payment be made if the recovery is overturned in a legal proceeding. DCH's decision to not pursue a recovery or the decision of a presiding officer in a legal proceeding that rejects the appropriateness of a recovery is final.

Activity E. Estate Recovery

Federal law and regulations require Michigan to establish a program to recover the cost of medical services reimbursed by Medicaid and received by certain beneficiaries prior to their death. The specific parameters of Michigan's estate recovery program have not yet been finalized (see point number two below).

The estate recovery program will apply to the costs of medical services reimbursed by Medicaid and received by certain beneficiaries prior to their death. Beneficiaries impacted by the estate recovery program will be those aged 55 years or older when the services were received. Medicaid beneficiaries dually eligible for Medicare will likely be impacted by the estate recovery program. For these individuals recoveries will also include, but may not be limited to, coinsurance and deductible payments and/or Medicare premiums paid on their behalf.

1. Although obviously not relative to Medicaid estate recovery, experience working with Michigan's legal system is desired. The Contractor must employ or subcontract with legal counsel, licensed to practice in the State of Michigan.

2. Upon approval of Michigan's estate recovery program by the federal Centers for Medicare & Medicaid Services (CMS), appropriate policies and procedures, as well as informational material, will be developed to assure that all applicants for Medicaid benefits potentially impacted by the program will be advised of and acknowledge the program's requirements. The Contractor will be advised of these policies and procedures and must develop its protocols in compliance with DCH requirements.

3. The estate recovery program will be managed by DCH's electronic Paternity and Casualty Recovery System (PCRS), a multi-faceted system that includes information about Medicaid beneficiaries as well as paid claims information related to any potential estate recovery. DCH will, on a monthly basis, update the PCRS file to identify beneficiaries potentially subject to estate recovery. The PCRS will identify Medicaid beneficiaries who have been reported as deceased and whose estates should be evaluated in order to recover payments made by the Medicaid program.

The death information on the PCRS results from reports made to Medicaid eligibility workers by relatives of and legal representatives for Medicaid beneficiaries, by providers of service and through data matches with Michigan Vital Records maintained by DCH and with files from the Social Security Administration. In many instances the information is obtained some time after the beneficiary's death and it is recognized that learning of these deaths sooner would be advantageous to the program's recovery efforts.

4. Immediately upon learning of the death of a Medicaid beneficiary for whom estate recovery must be initiated, but at least within 30 days of learning that a beneficiary has died, the Contractor must send the beneficiary's legal representative or executor a notice of intent to file a claim against the estate. The notice of intent to file a claim must be in a format approved by DCH.

If the deceased beneficiary's legal representative is unknown, the Contractor must notify DCH of the need for assistance to learn the identity of the individual. Upon such notification, DCH will determine if assistance/representation by the Michigan Office of Attorney General (AG) is required. The AG will represent DCH in all circumstances when legal representation is necessary. DCH will establish the protocol the Contractor must use to determine and notify DCH that legal representation is necessary and/or desired. The Contractor must cooperate in this process as needed. If AG representation is requested, the Contractor will be required to provide any necessary supporting documentation. The PCRS must be updated to reflect this action.



If a notice to creditors is received by DCH from an executor of a will for a deceased Medicaid beneficiary such notice will be immediately forwarded to the Contractor. Similarly, if DCH staff receives any telephone calls, letters, or legal documents potentially related to an estate recovery claim such information or documents will be forwarded to the Contractor.

The PCRS must be updated to reflect any notice issued by the Contractor or forwarded to the Contractor by DCH. Similarly, information regarding other documents or contacts pertinent to the recovery must, as appropriate, be added to the PCRS.

5. Within 30 days of learning the legal representative's identity, the Contractor must send the individual a questionnaire designed to gather the information necessary for DCH to determine whether recovery is appropriate. The content of the questionnaire must be designed to gather information including, but not limited to the extent of the deceased's estate, both real and personal property, and it must request documentation to support any potential exemption or waiver from estate recovery.

The questionnaire and any notices or other forms developed by the Contractor for use in administering the estate recovery program must be prior approved by DCH. Such approval will be conditioned upon the parameters of the estate recovery program approved by CMS, once that occurs, and the documents' review and acceptance as to form and conformance with federal requirements and state statute by DCH legal staff.

6. Upon receipt of the questionnaire and other documents, the Contractor must conduct any appropriate due diligence including, but not limited to:

- If a homestead is reported on the questionnaire, determining the assessed value of and any mortgage amount owing on the homestead, as well as the average price of a home in the county where the homestead is located; and
- Requesting documentation from the appropriate local office within DHS to determine whether the deceased had received any waiver or disregard of assets or resources during the application process for Medicaid eligibility as a result of a long-term care insurance policy.

Following any necessary due diligence, the Contractor must determine whether, based on criteria to be established by DCH, recovery in whole or in part is appropriate and if any statutory exemption criteria are met. Following this evaluation, the Contractor must develop a case packet that includes a copy of the questionnaire and all other related documentation as well as an itemization of the real and personal property subject to recovery. The packet must also propose how the recovery would be accomplished and provide an expected time frame. The PCRS must be updated to reflect the information in the packet, as appropriate.

The packet must be forwarded to DCH for review and approval. The Contractor must be available by telephone for a discussion of the packet's contents if necessary. DCH will determine if any or all of the estate recovery claim will be waived due to cost effectiveness or application of hardship criteria and will work with the Contractor to advise the deceased's legal representative of the State's intent to pursue recovery. The legal representative will be given an opportunity for appeal and an administrative hearing related to the proposed recovery. The Contractor will be advised of the ultimate results of any administrative appeal.

7. Following issuance of the proposed estate recovery notice and resolution of any appeal that might result, the Contractor must initiate actions to recover funds associated with the value of the real and/or personal property identified.

8. Payment will be made on a contingency basis as a percentage of any amounts recovered through the estate recovery process and provided to the State. Payment will not be made on any cases for which the DCH determines it is not cost effective to pursue recovery or that the deceased's heirs meet criteria for hardship or a waiver of recovery. Similarly, payment will not be made if DCH determines that recovery is not appropriate or if, through an administrative hearing or other legal proceeding, it is determined that recovery is not permitted.

Activity F. Medical Support Enforcement – National Medical Support Notices

Federal law and regulations require state child support enforcement agencies to enforce the health care coverage provision in a child support order through use of the National Medical Support Notice (NMSN). The Office of Child Support (OCS) within DHS complies with this requirement by mailing and pursuing favorable action on NMSNs. Locating and obtaining health insurance coverage for these children through the NMSN process is also consistent with DCH's obligation to assure that Medicaid is a payer of last resort because a number of the children covered by medical support orders are eligible for Medicaid. Accordingly there is a cooperative agreement between DCH and DHS/OCS regarding the tasks associated with this Activity.



The design and intent of the NMSN is to increase access to health care coverage for children, many of whom may be covered by Medicaid by using a standard form when issuing a medical support notice to the employer of the parent obligated to provide health care coverage.

1. Each business day child support program staff identify employers for parents (or other responsible parties) ordered to provide insurance coverage for a child(ren). Employers are identified through multiple mechanisms including a New Hire File – a file that identifies individuals recently hired into a new position of employment. When employment is identified, an NMSN is generated and mailed to the identified employer. A letter is sent to both the Non-Custodial Parent (NCP) and the Custodial Parent (CP) to alert them that the NMSN has been mailed. The NMSN directs the employers and/or their health plan administrators to immediately enroll dependent children in the parent or other responsible party's health care plan if available at a reasonable cost.

The NMSNs are returned by the employers and/or their health plan administrators to the local Friend of the Court (FOC) that oversees the applicable child support order. The FOCs have the option to process the NMSNs or they may choose to participate in the process through which the state's Contractor performs the NMSN review and the Michigan Child Support Enforcement System (MiCSES) update on their behalf. Participating FOCs receive and forward the reported insurance information to the Contractor; FOCs in 34 of the state's 83 counties currently participate in this process. The Contractor must review the NMSN and enter complete information into the MiCSES to reflect the new coverage and any coverage updates.

When information required by DCH and DHS/OCS is incomplete or not found on the NMSN, the Contractor must contact the employer (or designated health plan administrator or the identified insurance carrier) to obtain information necessary to complete the form and then update the MiCSES. The Contractor returns to the FOC any NMSNs or related documentation they are restricted from processing.

The Contractor must comply with OCS Action Transmittal 2008-006, which may be viewed by accessing the following site: <http://www.mfia.state.mi.us/ChildSupport/policy/pdf/2008/AT2008-006.pdf>.

2. The Contractor must, within 28 calendar days (four weeks) of receiving an incomplete NMSN from an FOC, or within an alternate time frame if agreeable to DCH, obtain all information necessary to complete the document and update the MiCSES accordingly.

3. The Contractor must be aware that compliance with established time frames for processing NMSNs is important. As a means to gauge NMSNs completed, work on hand and any backlogs, the Contractor must provide an electronic work status report to DCH. The report will identify NMSNs completed, NMSNs returned to the FOC and NMSNs received, but not yet completed within specific time parameters. Should DCH determine it appropriate at any time during this Contract, the Contractor must modify the format, content, and frequency of report submission at no cost to DCH.

DCH will impose a financial penalty if the Contractor fails to process a substantial volume of NMSNs within established time frames. DCH will work with the Contractor to identify both the volume and time frame parameters. The financial penalty will be a five percent reduction in payment for the NMSNs completed beyond the established time frame.

4. The Contractor must retain the NMSNs for a minimum of 90 days following their completion for audit purposes. After 90 days, unless an FOC has requested that their NMSNs be returned to them, the Contractor must shred and properly dispose of the NMSNs in accordance with federal HIPAA regulations.

5. Payment for tasks associated with the NMSN process will be made on a unit price basis for each NMSN and will include the cost associated with processing each NMSN to its final resolution, i.e., updating the MiCSES or returning to the FOC any NMSN they are restricted from processing.

The Contractor will not be responsible for implementing child support enforcement actions. The Contractor must refer to the appropriate FOC any enforcement issues arising from the NMSN process.

The Contractor will receive its full unit price payment for NMSNs completed within the mutually established time parameter. A five percent reduction will be applied to the unit price payment for NMSNs completed thereafter.

**Activity G. Potential Third Party Liability Activities**

As the introduction to this Contract noted, the primary objective of the Medicaid TPL program is to assure that Medicaid is the payer of last resort. This is accomplished through the avoidance of costs, i.e., avoiding the payment of claims for services that should be the liability of another payer, and through recovery actions when the liability of another payer is not known until after a claim has been paid by Medicaid. The basic Activities included in this Contract speak to the primary objective, but clearly may not be the only means to meet the objective. Accordingly, in addition to the included Activities, the state is interested in any other means to appropriately achieve its primary objective. The Contractor can present these means through the term of this Contract to the Agency for their approval/input.

Activity H. Program Integrity

Program integrity is a critical component of program management and should help ensure public confidence that a government program is serving its target population effectively and fulfilling the purpose for which the program was created and is maximizing the return on taxpayer's investment in the program, with minimal waste.

For activities G and H, the Contractor must perform new TPL/Program Integrity projects as mutually agreed upon in writing by the Agency and the Contractor. For each new initiative proposed, authorization to proceed will be at the sole discretion of the State. Scope of work, deliverables, and pricing for each new TPL/Program Integrity project will be mutually agreed upon in writing by both parties, as documented in Section 2.024, prior to any scope of work being initiated.

Activity I. Internal Controls and Quality Assurance MonitoringInternal Controls

The Contractor must establish appropriate internal controls for each Activity to assure that the information provided to DCH has been verified and is accurate. Further, the Contractor will not be paid to correct its own errors and may be financially penalized for any errors discovered by DCH.

One internal control mechanism that Contractor may consider is an electronic data base that tracks all tasks performed for an Activity and for which payment has been requested from DCH. Such a data base must permit ongoing access by specified DCH staff, reflect the basis for each payment request to DCH and include all pertinent information to support the payment request. The layout of such a data base would require approval by DCH.

A more detailed document will be required of the Contractor within 30 days of the award of this Contract.

Quality Assurance Monitoring

The Contractor must provide, for each Activity, a quality assurance mechanism to ensure the accuracy and quality of work performed. Often a quality assurance mechanism includes a secondary review of an appropriate sample of work associated with a specific task. The cost of the required quality assurance mechanism is considered an integral part of this Contract and will not be reimbursed separately.

Activity J. Compliance with Federal and State Laws, Rules, Regulations, Policies and Guidelines

As referenced in **Section 1.012** in this Contract, there are numerous federal and state laws, rules, regulations, policies and guidelines governing the Activities associated with this Contract and identified in this section. The Contractor is also reminded that **Section 2.210** of this Contract specifies that the Contractor must comply with all such governance. In addition, the Contract should note the following requirements related to Activities in this Contract:

- Any services or deliverables paid in association with this Contract will be from federal and state funds and any false claims, statements or documents, or any concealment of a material fact may be prosecuted under applicable federal or state laws and regulations, including the Michigan False Claims Act.
- The Contractor must comply in all material respects with all federal and state mandated regulations, rules, orders or guidance applicable to privacy, security and electronic transactions, including without limitation regulations promulgated under Title II Subtitle F of the Health Insurance Portability and Accountability Act (Public Law 104-191) (HIPAA). Furthermore, the Contractor must comply with any new or revised legislation, regulations, rules or orders applicable to tasks awarded to the Contractor pursuant to this procurement including, without limitation, the Standards for Privacy of Individually Identifiable Health Information or similar legislation (collectively, "Laws"), in order to ensure the Contractor is at all times in conformance with all Laws.
- The Contractor must sign a Business Associate Agreement (BAA) with DCH specific to the Activity for this Contract and affirm therein compliance with all applicable HIPAA requirements. The BAA will also include language regarding Security and Confidentiality, as referenced in **Section 2.090** and **Section 2.100** in this Contract.



- The Contractor must comply with indicated, amended or modified requirements for MMIS certification issued by CMS (see the Medicaid Enterprise Certification Toolkit available at www.cms.hhs.gov/MMIS) as they govern or impact the Contractor's service performance, work or deliverables for DCH.

Activity K. Business Expenses

The Contractor is responsible for all business expenses associated with performing the Activities in this Contract. These expenses include, but are not limited to, office space, furniture, equipment, supplies, postage, telephone costs, travel, and staff salaries and fringe benefits. All information technology costs associated with the Activity in this Contract are also considered business expenses and are the Contractor's responsibility. If appropriate for the Activity, the cost of operating the toll free telephone line and establishing and maintaining the web site referenced in this Section is also included in the cost for the Activity.

Activity L. Information Technology Requirements

CHAMPS and Bridges

DCH is updating its current MMIS operating system. The new system is called CHAMPS – Community Health Automated Medicaid Processing System and, as the name implies, has many automated features. Implementation of CHAMPS, which has begun, but will continue in phases over the next year or more, will impact Medicaid TPL functionalities and claims processing. The Contractor is encouraged to visit DCH's web site at http://www.michigan.gov/mdch/0,1607,7-132-2945_5100-145006--,00.html for additional information regarding CHAMPS.

A second new computer system being developed is called Bridges. This system is under development at DHS and when fully implemented will consolidate the functions of three primary and multiple secondary systems that workers currently use to determine eligibility and benefits for Michigan residents seeking cash assistance, medical assistance, food assistance, and/or child care assistance through the department. One significant characteristic of the new system is that Medicaid beneficiary identifiers assigned through the Bridges system could over time grow to 12 digits although in counties where Bridges has been implemented to date the identifiers are 10 digits. Under the Bridges system, new applicants are assigned a 10 digit number and current beneficiaries retain their 8 digit number from the legacy system with two leading zeroes. Implementation of the Bridges system has begun in a few counties and is anticipated to be in place statewide before the end of 2009.

Either or both of these new computer systems could require the Contractor to make modifications to its systems and processes during this Contract. The Contractor must accept the responsibility, without additional financial cost to DCH, for making these modifications as necessary in order to effectively and efficiently carry out the responsibilities of this Contract.

Disaster Recovery Plan

The Contractor must develop and maintain, for the duration of this Contract and any transition period thereafter, a disaster recovery plan for restoring the application of software and electronic files and for hardware backup in the event the production systems are destroyed.

- The disaster recovery plan must limit service interruption to a period no greater than 72 consecutive hours and must ensure compliance with these Contract requirements.
- A final plan is required of the Contractor within 30 days of Contract award. The final plan must be consistent with the preliminary plan and implemented only after DCH approval.
- DCH reserves the right to direct the Contractor to amend or update its disaster recovery plan when required due to a change in federal or state policy or in accordance with the best interests of the state; such revisions will be made upon request throughout this Contract and at no additional cost to DCH.
- All aspects of the disaster recovery plan must be available to DCH at all times.

Activity M. Contractor Communications – Written and Verbal

All correspondence, forms, or other documents developed by the Contractor and intended for issuance to potentially liable third party payers, providers, employers or others for purposes associated with the Activities in this Contract must be approved by DCH prior to use. All such documents must be submitted to DCH for review at least 30 calendar days prior to their intended use. DCH reserves the right, for the duration of this Contract, to direct the Contractor to make revisions to any previously approved correspondence, forms or other documents when required due to a change in federal or state policy or in accordance with the best interests of the state; such revisions will be made as requested throughout this Contract and at no additional cost to DCH.

All correspondence used by the Contractor must provide accurate and sufficient information, in accordance with DCH requirements, federal, and state laws.



The Contractor must ensure that all reports, correspondence, electronic files, or other documents submitted to DCH or a designee are correct and any identified errors must be corrected at no additional cost to DCH.

The Contractor must adhere to any scripts for verbal communications with potentially liable third party payers, providers, employers or others for purposes associated with the Activities in this Contract as provided and required by DCH or DHS. DCH/DHS reserves the right, for the duration of this Contract, to modify the required scripts.

Activity N. Customer Service

Telephone System

The Contractor responsible for Activity A – Health Insurance Cost Avoidance and Recovery, Activity A.1 – Medical Support Enforcement – Insurance Eligibility Matching, Activity B – Paternity Confinement Expense, Activity C – Court Originated Liability, Activity E – Estate Recovery or Activity F – Medical Support Enforcement – National Medical Support Notice issuance, as well as any other Contract Activity for which it is appropriate, must establish and maintain a toll free telephone system to facilitate communication with the potentially liable third parties, employers, or others involved with the specific Activity.

- The telephone system must be staffed, at a minimum, from 8:00 a.m. to 5:00 p.m. Eastern Standard Time or Eastern Daylight Time, as appropriate, Monday through Friday, except on federal or State of Michigan holidays.
- The staff taking calls must assist all callers in a professional and courteous manner while following all guidelines regarding confidentiality of Medicaid information. As appropriate, staff must utilize DCH and DHS-approved scripts when taking calls related to specific activities. Any complaints received through the telephone system must be thoroughly documented, including how the complaint was handled; such documentation must be submitted to DCH upon request.
- An interactive voice response system may be used, but must include a means for the caller to speak without delay to a “live” person. A before and after hours message advising a caller of the system’s hours of operation as well as a mechanism for callers to leave voice messages must be included. The Contractor must assure that calls are returned by the end of the next business day after any message is left.
- The structure of the telephone system, including the messages on any interactive voice response system, must be approved by DCH prior to implementation.
- Statistics must be maintained and provided to DCH monthly to reflect the volume of calls by type, including, but not necessarily limited to, those calls answered and calls abandoned/dropped. Statistics regarding wait time will also be required.

Web Site

The Contractor responsible for Activity A – Health Insurance Cost Avoidance and Recovery, Activity A.1 – Medical Support Enforcement – Insurance Eligibility Matching, Activity B – Paternity Confinement Expense, Activity C – Court Originated Liability or Activity E – Estate Recovery, as well as any other Contract Activity for which it is appropriate, must develop and maintain a web site that provides educational information regarding the Medicaid TPL activity(ies) and a means of contacting the Contractor (address, telephone, fax and email).

- The Contractor may modify an existing corporate web site to include information specific to a Michigan contract. The Michigan-specific content must be approved by the DCH Project Manager prior to “launch”.
- The web site must include a method for interested parties, especially potentially liable third party payers, employers, or others involved with the specified Activity to contact the Contractor through an established e-mail account.
- The Contractor must respond to all messages by the end of the next business day after any message is left.
- DCH reserves the right to direct the Contractor to amend or update its web site when required due to a change in federal or state policy or in accordance with the best interests of the state; such revisions will be made throughout this Contract and at no additional cost to DCH.

DHS/OCS will provide the Contractor with a web site containing information applicable to Activity F – Medical Support Enforcement – National Medical Support Notice issuance. The Contractor must include a direct link on its web site to the site provided by DHS/OCS.

Activity O. Lock-Box

The Contractor must utilize a Lock-Box Account established through the Michigan Department of Treasury for the Contractor’s Medicaid TPL recovery work. A separate Lock-Box Account has also been established for DCH’s TPL recovery work. Any documents misdirected to the DCH Lock-Box will be forwarded to the Contractor. The DCH is exploring a process that would scan all documents entering these Lock-Boxes and allow all scanned documents entering the Contractor’s designated Lock-Box to be shared with the Contractor. If such a process is implemented, the Contractor will be charged 50 percent of the assessed scanning charge for any document entering either Lock-Box that is not either a payment or related to a payment.



DCH will establish criteria to identify what constitutes a payment-related document. The Contractor is expected to post all payments deposited in the Lock-Box to the applicable tracking system within 24 business hours of receipt.

Activity P. Physical Location of Contractor

The Contractor must identify where its staff will be physically located for the duration of the Contract (city at a minimum and street address if known). The State will not make space available in its facilities for Contractor's staff. The State would prefer that the staff performing significant tasks associated with each Activity be physically located in Michigan. For those Activities for which Key Personnel includes legal counsel, the counsel must be licensed to practice in Michigan.

1.030 Roles and Responsibilities

1.031 Contractor Staff, Roles, and Responsibilities

A. Key Personnel

Key Personnel must include, at least, the following:

1. Project Manager. The Contractor must have a Project Manager as a single point of contact for DCH with overall responsibility for the Contractor's functions under this Contract. The Project Manager must have the authority to make decisions and to resolve problems on the Contractor's behalf with the State (both DCH and DMB).
2. Project Sub-Managers. The Contractor must have Project Sub-Managers responsible for specified major categories of tasks under this Contract. Recognizing that the Project Manager may not always be readily available to resolve any day-to-day operational problems, the Project Sub-Managers (or designated back-ups) must be available by e-mail or telephone to respond to inquiries from DCH staff within 30 minutes of contact during every business day.
3. Financial Manager. DCH considers it critical that the Contractor have a knowledgeable and experienced member of its staff responsible for financial management.
4. Information Technology (IT) Manager. Much of the work involved in each Activity involves information technology. Accordingly, to assure that the Activity is managed effectively, an IT Manager is a requirement.
5. Customer Service Manager. DCH expects that all contacts related to the TPL function, whether by its own staff or its Contractors, be conducted in a professional and courteous manner. To assure that all written documents and verbal protocols are structured to comply with this expectation, an experienced staff person responsible for this oversight is a requirement.
6. Legal Counsel (applicable to Activities C and E). These two Activities will include significant involvement with Michigan's legal system and require counsel experienced with the State's statutes and court protocols applicable to the expected legal actions.

B. Subcontractors

If the Contractor intends to use one or more Subcontractors for any portion of this work, the specific task(s) or sub-task(s) to be performed for each Activity must be reflected.

C. Staff Training

The Contractor must provide training relative to the specific task(s) associated with each Activity. This training must be provided for all new employees prior to assuming their duties. The Contractor must conduct regular refresher training to assure that all staff are aware of any program, process or policy changes. DCH and DHS, as appropriate, will provide training for the Contractor's training staff. The Contractor must permit the State (DCH and/or DMB) access to records relating to such training and, if requested, permit State staff to attend (monitor) training programs.

1.040 Project Plan

1.041 Project Plan Management

Project Management by the Contractor

The Contractor will carry out the tasks associated with each Activity under the direction and control of DCH. Although there will be continuous liaison with the Contractor's team, the DCH Project Manager may require face-to-face meetings on a weekly basis for the first few months of this Contract if it is determined necessary for effective implementation of the Activity. These meetings will be held at DCH offices in Lansing, Michigan and include the Contractor's Project Manager and any other Key Personnel as appropriate, including Subcontractors if applicable. Thereafter, face-to-face meetings for the purpose of reviewing progress and providing necessary guidance to the Contractor in solving problems which arise will occur monthly with participants mutually determined. Special meetings may be called by either party to address problems or issues requiring immediate attention. The referenced meetings will address all Activities in this Contract.



The Contractor will assure that specifically designated staff is available by e-mail or telephone to respond to inquiries from DCH staff by close of business on the day of contact.

The Contractor's Project Manager will submit brief written monthly summaries of progress specific to each Activity to the DCH Project Manager, which outline the work accomplished during the reporting period; work to be accomplished during the subsequent reporting period; problems, real or anticipated, which should be brought to the attention of the DCH Project Manager; and any significant deviation from previously agreed-upon work statements. These monthly reports must be submitted to the DCH Project Manager via e-mail at least three business days prior to the monthly meetings and are in addition to any reports required in **Section 1.020** and **Section 1.042** of this Contract. During the first few months of this Contract, e-mailed progress reports will be required on a weekly basis and at least one business day prior to the weekly meeting.

Within 10 business days of this Contract award, the Contractor's Project Manager will submit a revised/updated work plan to the DCH Project Manager for final approval. This work plan must be in agreement with the Activity-specific implementation plan(s) included in the Contractor's proposal and accepted by the State for this Contract, and must, at a minimum, include the following:

- The Contractor's Activity-specific organization structure, including Subcontractors, if any.
- The Contractor's staffing table with names and titles of both Key Personnel and any subordinate supervisory staff assigned to the Activity(ies). Necessary substitutions due to change of employment status and other unforeseen circumstances may only be made with prior approval by the State (DCH and/or DMB depending on which staff are involved).
- A breakdown for each Activity that shows tasks and process flows, systems requirements and functionalities, timelines and reports, and staff resources required and allocated to each.

Project Management by DCH

DCH will conduct a readiness review of the Contractor within 30 calendar days of the award of this Contract. DMB, at its discretion, may participate in this readiness review as well.

A Project Manager will be designated by DCH as the primary point of contact between the Contractor and personnel in DCH as well as in DHS/OCS. The DCH Project Manager will:

- Ensure that the Contractor's Key Personnel receive any training necessary relative to Michigan's Medicaid TPL program as well as data system function and compatibility;
- Perform, or oversee the performance by State staff of, a periodic quality assurance review of Activity-specific tasks, e.g., a selected number of records forwarded to DCH reflecting new or terminated insurance coverage or recoveries from third party payers;
- Ensure that the Contractor is provided with necessary systems and interface specifications and any forms or formats required for the performance of the Contracted task(s);
- Ensure that the Contractor is provided with the files referenced in Section 1.022, including those that reflect eligibility, insurance coverage, and claims paid by the Medicaid program; and
- Ensure that staff of the Contractor is provided with access as appropriate to other data or systems necessary to fulfill the requirements of this Contract.

The referenced quality assurance review by State staff is separate and distinct from the quality assurance monitoring required of the Contractor.

DCH will review and respond with either an approval, denial or request for revision all forms, form letters and other documents submitted by the Contractor that are intended for issuance to potentially liable third party payers, providers, employers or others. Such review and approval is required prior to their use by a Contractor or Subcontractor.

DCH will provide Medicaid TPL program policy and process clarification when requested by the Contractor.

DCH will make all determinations regarding the cost effectiveness of pursuing recoveries related to any Activities covered by this Contract. DCH reserves the right, at its sole discretion, to direct the Contractor to cease pursuit of a specific recovery at any time.



1.042 Reports

The following reports and electronic files will be required from the Contractor:

- The specific reports and electronic files listed below;
- Summaries of progress and problems as identified in **Section 1.041** of this Contract; and
- Ad hoc reports as mutually agreed upon.

The Contractor must deliver the following reports and files electronically to the DCH Project Manager or other designated State staff in a mutually agreeable format and in the time frames specified:

Activity in Section 1.022	Report or File	Frequency
A.7	Report identifying Entities submitting coverage files with addendum regarding compliance with technical record format requirement	Monthly
A.9 A.1.2	Consolidated Response File reflecting verified commercial insurance coverage	Weekly
A.10 A.1.3	Report identifying initial and verified matches by commercial carrier	Every 8 Weeks
A.10 A.1.3	Report identifying initial matches not yet verified by commercial carrier	Every 8 Weeks
A.15	Consolidated Response File reflecting verified TRICARE insurance coverage	Weekly
A.16	Report identifying initial and verified matches for TRICARE	Every 8 Weeks
A.16	Report identifying initial matches not yet verified for TRICARE	Every 8 Weeks
A.21 A.27	Electronic Adjudication Data Base to track claims received and recoveries initiated	For Ongoing Use
A.21 A.27	Electronic Adjudication File to identify recoveries and rejected claims	Monthly
A.21 A.27	Report identifying claims rejected due to technical errors, resubmitted to payers and not yet adjudicated	Monthly
A.23 A.29	Electronic file of Claim Reference Numbers/Transaction Control Numbers for which recoveries have been initiated	Monthly
B.3	Spreadsheet identifying beneficiaries for which CER information has been retrieved	Weekly
B.3	Completed CERs batched and delivered to DCH	Weekly
B.5	Electronic work status report of CERs completed and outstanding	To be Determined
C.5 C.9 C.16	Report with detail supporting invoice for contingency payment request	Monthly
D.2	Electronic data base for managing audits and reporting results	For Ongoing Use
D.2	Audit packet	Upon Completion
E.6	Case packet for each beneficiary for which estate recovery is proposed	Upon Completion
F.3	Electronic work status report of NMSNs completed and outstanding	To be Determined
Other	Report or File	Frequency
1.041	Activity-specific progress report	3 days before each Monthly Meeting
1.041	Activity-specific work plan	10 business days after Contract award



1.050 Acceptance

1.051 Criteria

The following criteria will be used by the State to determine Acceptance of the Services and/or Deliverables provided under this Statement of Work.

The DCH Project Manager will be responsible for verifying that the work:

- Was performed within the time period referenced;
- Meets the deliverables criteria; and
- Was performed according to the Contract specifications.

Before implementing any of the Activities described in the Statement of Work in **Section 1.022** the Contractor will perform necessary testing and quality assurance tasks to verify compliance with the requirements in this Contract. Included in this requirement is the development of any electronic systems, reports, documents or other protocols established in order to perform the Activities. The Contractor must demonstrate such compliance to the satisfaction of the DCH Project Manager. If modifications are required, they must be made prior to implementation.

For the duration of this Contract, should the DCH Project Manager advise the Contractor of modifications that must be made in any electronic systems, reports, documents or other protocols associated with the Activities being performed by the Contractor or any Subcontractor, either due to issues with the way such Activities are being performed or due to changes in federal or state requirements, the Contractor must at no cost to DCH make such modifications.

The DCH Project Manager will be responsible for reviewing each invoice from the Contractor to ensure that the amounts billed, both for work reimbursed on a unit price basis and on a contingency basis, are consistent with deliverables. Once the DCH Project Manager approves the invoice, they will forward it to DCH Purchasing for payment via the established DCH approval path.

1.052 Final Acceptance – Deleted – NA

1.060 Proposal Pricing

1.061 Proposal Pricing

For authorized Services and Price List, see Appendix A.

Contractor's out-of-pocket expenses are not separately reimbursable by the State unless, on a case-by-case basis for unusual expenses, the State has agreed in advance and in writing to reimburse Contractor for the expense at the State's current travel reimbursement rates. See www.michigan.gov/dmb for current rates.

1.062 Price Term

Prices quoted are firm for the entire length of this Contract.

If at any time during the period of this Contract the Contractor enters into a contract with any other governmental customer through which it agrees to provide equivalent services at lower prices or additional services at better prices than those included in this Contract, the Contractor must, within 30 days of implementing or providing such terms to another party, offer the better pricing terms to the State of Michigan. For each year of this Contract, including any optional renewal periods (if exercised), on the anniversary of this Contract start date, the Contractor must provide a written certification stating that the Contractor is in full compliance with this Section for the Contract year.

In the event that the more favorable pricing terms are not readily adaptable to the pricing terms of this Contract, the Contractor and the State will negotiate in good faith to reach mutually acceptable pricing terms.

1.063 Tax Excluded from Price

(a) Sales Tax: For purchases made directly by the State, the State is exempt from State and Local Sales Tax. Prices must not include the taxes. Exemption Certificates for State Sales Tax will be furnished upon request.



(b) Federal Excise Tax: The State may be exempt from Federal Excise Tax, or the taxes may be reimbursable, if articles purchased under any resulting Contract are used for the State's exclusive use. Certificates showing exclusive use for the purposes of substantiating a tax-free, or tax-reimbursable sale will be sent upon request. If a sale is tax exempt or tax reimbursable under the Internal Revenue Code, prices must not include the Federal Excise Tax.

1.064 Holdback – Deleted – N/A

1.070 Additional Requirements

1.071 Additional Terms and Conditions specific to this Contract

A. Contractor Liability for Fiscal Sanctions

If any State or federal agency or court of law imposes fiscal sanctions or disallowances against DCH or DHS as a result of the Contractor's action or inaction associated with an Activity covered by this Contract, the Contractor must accept fiscal liability and compensate DCH or DHS for any and all sanctioned or disallowed amounts. This liability extends to the Contractor's Subcontractors, if any.

B. Contractor's Failure to Comply

Should the Contractor at any time: 1) refuse or neglect to supply adequate and competent supervision; 2) refuse or fail to provide sufficient and properly skilled personnel, equipment, or materials of the proper quality or quantity; 3) fail to provide the services in accordance with the time frames set forth in this Contract; or 4) fail in the performance of any item or condition contained in this Contract, the State (DCH and/or DMB) may, in addition to any other contractual, legal or equitable remedies, proceed to take any one or more of the following actions after five business days written notice to the Contractor:

- Withhold any monies then or next due to the Contractor;
- Obtain the services or their equivalent from a third party, pay the third party for same, and withhold the amount so paid to the third party from any money then or thereafter due to the Contractor; or
- Withhold monies in the amount of any damage caused by any deficiency, error, or delay in the services.

**Article 2, Terms and Conditions****2.000 Contract Structure and Term****2.001 Contract Term**

This Contract is for a period of three years beginning January 1, 2010 through December 31, 2012. All outstanding Purchase Orders must also expire upon the termination (cancellation for any of the reasons listed in **Section 2.150**) of this Contract, unless otherwise extended under this Contract. Absent an early termination for any reason, Purchase Orders issued but not expired, by the end of this Contract's stated term, will remain in effect for the balance of the fiscal year for which they were issued.

2.002 Options to Renew

This Contract may be renewed in writing by mutual agreement of the parties not less than 30 days before its expiration. This Contract may be renewed for up to two additional one year periods.

2.003 Legal Effect

Contractor must show acceptance of this Contract by signing two copies of this Contract and returning them to the Contract Administrator. The Contractor must not proceed with the performance of the work to be done under this Contract, including the purchase of necessary materials, until both parties have signed this Contract to show acceptance of its terms, and the Contractor receives a Contract release/purchase order that authorizes and defines specific performance requirements.

Except as otherwise agreed in writing by the parties, the State assumes no liability for costs incurred by Contractor or payment under this Contract, until Contractor is notified in writing that this Contract (or Change Order) has been approved by the State Administrative Board (if required), approved and signed by all the parties, and a Purchase Order against this Contract has been issued.

2.004 Attachments & Exhibits

All Attachments and Exhibits affixed to any and all Statement(s) of Work, or appended to or referencing this Contract, are incorporated in their entirety and form part of this Contract.

2.005 Ordering

The State will issue a written Purchase Order, Blanket Purchase Order, Direct Voucher or Procurement Card Order, which must be approved by the Contract Administrator or the Contract Administrator's designee, to order any Services/Deliverables under this Contract. All orders are subject to the terms and conditions of this Contract. No additional terms and conditions contained on either a Purchase Order or Blanket Purchase Order apply unless they are also specifically contained in that Purchase Order's or Blanket Purchase Order's accompanying Statement of Work. Exact quantities to be purchased are unknown; however, the Contractor must furnish all such materials and services as may be ordered during this Contract period. Quantities specified, if any, are estimates based on prior purchases, and the State is not obligated to purchase in these or any other quantities.

2.006 Order of Precedence

(a) This Contract, including any Statements of Work and Exhibits, to the extent not contrary to this Contract, each of which is incorporated for all purposes, constitutes the entire agreement between the parties with respect to the subject matter and supersedes all prior agreements, whether written or oral, with respect to the subject matter and as additional terms and conditions on the purchase order must apply as limited by **Section 2.005**.

(b) In the event of any inconsistency between the terms of this Contract and a Statement of Work, the terms of the Statement of Work will take precedence (as to that Statement of Work only); provided, however, that a Statement of Work may not modify or amend the terms of this Contract, which may be modified or amended only by a formal Contract amendment.

2.007 Headings

Captions and headings used in this Contract are for information and organization purposes. Captions and headings, including inaccurate references, do not, in any way, define or limit the requirements or terms and conditions of this Contract.

**2.008 Form, Function, & Utility**

If this Contract is for use of more than one State agency and if the Deliverable/Service does not meet the form, function, and utility required by that State agency, that agency may, subject to State purchasing policies, procure the Deliverable/Service from another source.

2.009 Reformation and Severability

Each provision of this Contract is severable from all other provisions of this Contract and, if one or more of the provisions of this Contract is declared invalid, the remaining provisions of this Contract remain in full force and effect.

2.010 Consents and Approvals

Except as expressly provided otherwise in this Contract, if either party requires the consent or approval of the other party for the taking of any action under this Contract, the consent or approval must be in writing and must not be unreasonably withheld or delayed.

2.011 No Waiver of Default

If a party fails to insist upon strict adherence to any term of this Contract then the party has not waived the right to later insist upon strict adherence to that term, or any other term, of this Contract.

2.012 Survival

Any provisions of this Contract that impose continuing obligations on the parties, including without limitation the parties' respective warranty, indemnity and confidentiality obligations, survive the expiration or termination of this Contract for any reason. Specific references to survival in this Contract are solely for identification purposes and not meant to limit or prevent the survival of any other section.

2.020 Contract Administration**2.021 Issuing Office**

This Contract is issued by the Department of Management and Budget, Purchasing Operations, and DCH (collectively, including all other relevant State of Michigan departments and agencies, the "State"). Purchasing Operations is the sole point of contact in the State with regard to all procurement and contractual matters relating to this Contract. Purchasing Operations **is the only State office authorized to change, modify, amend, alter or clarify the prices, specifications, terms and conditions of this Contract.** The Contractor Administrator within Purchasing Operations for this Contract is:

Lance Kingsbury
Department of Management and Budget – Purchasing Operations
PO Box 30026
Lansing, MI 48909
Phone: (517) 241-3768
e-mail: kingsburyL@michigan.gov

2.022 Contract Compliance Inspector

After DMB-Purchasing Operations receives the properly executed Contract, it is anticipated that the Director of Purchasing Operations, in consultation with DCH, will direct the person named below, or any other person so designated, to monitor and coordinate the activities for this Contract on a day-to-day basis during its term. However, monitoring of this Contract implies **no authority to change, modify, clarify, amend, or otherwise alter the prices, terms, conditions and specifications of this Contract as that authority is retained by DMB Purchasing Operations.** The CCI for this Contract is:

Laura Dotson
Contract Management Section
Department of Community Health
Lewis Cass Building
320 South Walnut Street
Lansing, MI 48933
Phone: (517) 241-4686
e-mail: DotsonL1@michigan.gov

**2.023 Project Manager**

The following individual will oversee the project:

Tanya Lowers, Director
Third Party Liability Division
Bureau of Medicaid Financial Management and Administrative Services
Medical Services Administration
Michigan Department of Community Health
400 S. Pine Street, Lansing, Michigan 48909
LowersT@michigan.gov
Phone: (517) 335-8760
Fax: (517) 335-9422

2.024 Change Requests

The State reserves the right to request, from time to time, any changes to the requirements and specifications of this Contract and the work to be performed by the Contractor under this Contract. During the course of ordinary business, it may become necessary for the State to discontinue certain business practices or create Additional Services/Deliverables. At a minimum, to the extent applicable, the State would like the Contractor to provide a detailed outline of all work to be done, including tasks necessary to accomplish the services/deliverables, timeframes, listing of key personnel assigned, estimated hours for each individual per task, and a complete and detailed cost justification.

If the Contractor does not so notify the State, the Contractor has no right to claim thereafter that it is entitled to additional compensation for performing that service or providing that deliverable.

Change Requests:

- (a) By giving Contractor written notice within a reasonable time, the State must be entitled to accept a Contractor proposal for Change, to reject it, or to reach another agreement with Contractor. Should the parties agree on carrying out a Change, a written Contract Change Notice must be prepared and issued under this Contract, describing the Change and its effects on the Services and any affected components of this Contract (a "Contract Change Notice").
- (b) No proposed Change may be performed until the proposed Change has been specified in a duly executed Contract Change Notice issued by the Department of Management and Budget, Purchasing Operations.
- (c) If the State requests or directs the Contractor to perform any activities that Contractor believes constitute a Change, the Contractor must notify the State that it believes the requested activities are a Change before beginning to work on the requested activities. If the Contractor fails to notify the State before beginning to work on the requested activities, then the Contractor waives any right to assert any claim for additional compensation or time for performing the requested activities. If the Contractor commences performing work outside the scope of this Contract and then ceases performing that work, the Contractor must, at the request of the State, retract any out-of-scope work that would adversely affect this Contract.

2.025 Notices

Any notice given to a party under this Contract must be deemed effective, if addressed to the State contact as noted in Section 2.021 and the Contractor's contact as noted on the cover page of this Contract, upon: (i) delivery, if hand delivered; (ii) receipt of a confirmed transmission by facsimile if a copy of the notice is sent by another means specified in this Section; (iii) the third Business Day after being sent by U.S. mail, postage pre-paid, return receipt requested; or (iv) the next Business Day after being sent by a nationally recognized overnight express courier with a reliable tracking system.

Either party may change its address where notices are to be sent by giving notice according to this Section.

2.026 Binding Commitments

Representatives of Contractor must have the authority to make binding commitments on Contractor's behalf within the bounds set forth in this Contract. Contractor may change the representatives from time to time upon written notice.

**2.027 Relationship of the Parties**

The relationship between the State and Contractor is that of client and independent contractor. No agent, employee, or servant of Contractor or any of its Subcontractors must be deemed to be an employee, agent or servant of the State for any reason. Contractor is solely and entirely responsible for its acts and the acts of its agents, employees, servants and Subcontractors during the performance of this Contract.

2.028 Covenant of Good Faith

Each party must act reasonably and in good faith. Unless stated otherwise in this Contract, the parties must not unreasonably delay, condition, or withhold the giving of any consent, decision, or approval that is either requested or reasonably required of them in order for the other party to perform its responsibilities under this Contract.

2.029 Assignments

(a) Neither party may assign this Contract, or assign or delegate any of its duties or obligations under this Contract, to any other party (whether by operation of law or otherwise), without the prior written consent of the other party; provided, however, that the State may assign this Contract to any other State agency, department, division or department without the prior consent of Contractor and Contractor may assign this Contract to an affiliate so long as the affiliate is adequately capitalized and can provide adequate assurances that the affiliate can perform the requirements of this Contract. The State may withhold consent from proposed assignments, subcontracts, or novations when the transfer of responsibility would operate to decrease the State's likelihood of receiving performance on this Contract or the State's ability to recover damages.

(b) Contractor may not, without the prior written approval of the State, assign its right to receive payments due under this Contract. If the State permits an assignment, the Contractor is not relieved of its responsibility to perform any of its contractual duties, and the requirement under this Contract that all payments must be made to one entity continues.

(c) If the Contractor intends to assign this Contract or any of the Contractor's rights or duties under this Contract, the Contractor must notify the State in writing at least 90 days before the assignment. The Contractor also must provide the State with adequate information about the assignee within a reasonable amount of time before the assignment for the State to determine whether to approve the assignment.

2.030 General Provisions**2.031 Media Releases**

News releases (including promotional literature and commercial advertisements) pertaining to this Contract or project to which it relates must not be made without prior written State approval, and then only in accordance with the explicit written instructions from the State. No results of the activities associated with this Contract are to be released without prior written approval of the State and then only to persons designated.

2.032 Contract Distribution

Purchasing Operations retains the sole right of Contract distribution to all State agencies and local units of government unless other arrangements are authorized by Purchasing Operations.

2.033 Permits

Contractor must obtain and pay any associated costs for all required governmental permits, licenses and approvals for the delivery, installation and performance of the Services. The State must pay for all costs and expenses incurred in obtaining and maintaining any necessary easements or right of way.

2.034 Website Incorporation

The State is not bound by any content on the Contractor's website, even if the Contractor's documentation specifically referenced that content and attempts to incorporate it into any other communication, unless the State has actual knowledge of the content and has expressly agreed to be bound by it in a writing that has been manually signed by an authorized representative of the State.

**2.035 Future Bidding Preclusion**

Contractor acknowledges that, to the extent this Contract involves the creation, research, investigation or generation of a future RFP, it may be precluded from bidding on the subsequent RFP. The State reserves the right to disqualify any Bidder if the State determines that the Bidder has used its position (whether as an incumbent Contractor, or as a Contractor hired to assist with the RFP development, or as a Vendor offering free assistance) to gain a competitive advantage on the RFP.

2.036 Freedom of Information

All information in any proposal submitted to the State by Contractor and this Contract is subject to the provisions of the Michigan Freedom of Information Act, 1976 PA 442, MCL 15.231, et seq (the "FOIA").

2.037 Disaster Recovery

Contractor and the State recognize that the State provides essential services in times of natural or man-made disasters. Therefore, except as so mandated by Federal disaster response requirements, Contractor personnel dedicated to providing Services/Deliverables under this Contract must provide the State with priority service for repair and work around in the event of a natural or man-made disaster.

2.040 Financial Provisions**2.041 Fixed Prices for Services/Deliverables**

Each Statement of Work or Purchase Order issued under this Contract must specify (or indicate by reference to the appropriate Contract Exhibit) the firm, fixed prices for all Services/Deliverables, and the associated payment milestones and payment amounts. The State may make progress payments to the Contractor when requested as work progresses, but not more frequently than monthly, in amounts approved by the Contract Administrator, after negotiation. Contractor must show verification of measurable progress at the time of requesting progress payments.

2.042 Adjustments for Reductions in Scope of Services/Deliverables

If the scope of the Services/Deliverables under any Statement of Work issued under this Contract is subsequently reduced by the State, the parties must negotiate an equitable reduction in Contractor's charges under such Statement of Work commensurate with the reduction in scope.

2.043 Services/Deliverables Covered

For all Services/Deliverables to be provided by Contractor (and its Subcontractors, if any) under this Contract, the State must not be obligated to pay any amounts in addition to the charges specified in this Contract.

2.044 Invoicing and Payment – In General

(a) Each Statement of Work issued under this Contract must list (or indicate by reference to the appropriate Contract Exhibit) the prices for all Services/Deliverables, equipment and commodities to be provided, and the associated payment milestones and payment amounts.

(b) Each Contractor invoice must show details as to charges by Service/Deliverable component and location at a level of detail reasonably necessary to satisfy the State's accounting and charge-back requirements. Invoices for Services performed on a time and materials basis must show, for each individual, the number of hours of Services performed during the billing period, the billable skill/labor category for such person and the applicable hourly billing rate. Prompt payment by the State is contingent on the Contractor's invoices showing the amount owed by the State minus any holdback amount to be retained by the State in accordance with **Section 1.064**.

(c) Correct invoices will be due and payable by the State, in accordance with the State's standard payment procedure as specified in 1984 PA 279, MCL 17.51 et seq., within 45 days after receipt, provided the State determines that the invoice was properly rendered.

(d) All invoices should reflect actual work done. Specific details of invoices and payments will be agreed upon between the Contract Administrator and the Contractor after this Contract has been signed and accepted by both the Contractor and the Director of Purchasing Operations, Department of Management & Budget. This activity will occur only upon the specific written direction from Purchasing Operations.

**2.045 Pro-ration**

To the extent there are any Services that are to be paid for on a monthly basis, the cost of such Services must be pro-rated for any partial month.

2.046 Antitrust Assignment

The Contractor assigns to the State any claim for overcharges resulting from antitrust violations to the extent that those violations concern materials or services supplied by third parties to the Contractor, toward fulfillment of this Contract.

2.047 Final Payment

The making of final payment by the State to Contractor does not constitute a waiver by either party of any rights or other claims as to the other party's continuing obligations under this Contract, nor will it constitute a waiver of any claims by one party against the other arising from unsettled claims or failure by a party to comply with this Contract, including claims for Services and Deliverables not reasonably known until after acceptance to be defective or substandard. Contractor's acceptance of final payment by the State under this Contract must constitute a waiver of all claims by Contractor against the State for payment under this Contract, other than those claims previously filed in writing on a timely basis and still unsettled.

2.048 Electronic Payment Requirement

Electronic transfer of funds is required for payments on State contracts. The Contractor must register with the State electronically at <http://www.cpexpress.state.mi.us>. As stated in 1984 PA 431, all contracts that the State enters into for the purchase of goods and services must provide that payment will be made by Electronic Fund Transfer (EFT).

2.050 Taxes**2.051 Employment Taxes**

Contractors are expected to collect and pay all applicable federal, State, and local employment taxes.

2.052 Sales and Use Taxes

Contractors are required to be registered and to remit sales and use taxes on taxable sales of tangible personal property or services delivered into the State. Contractors that lack sufficient presence in Michigan to be required to register and pay tax must do so as a volunteer. This requirement extends to: (1) all members of any controlled group as defined in § 1563(a) of the Internal Revenue Code and applicable regulations of which the company is a member, and (2) all organizations under common control as defined in § 414(c) of the Internal Revenue Code and applicable regulations of which the company is a member that make sales at retail for delivery into the State are registered with the State for the collection and remittance of sales and use taxes. In applying treasury regulations defining "two or more trades or businesses under common control" the term "organization" means sole proprietorship, a partnership (as defined in § 701(a) (2) of the Internal Revenue Code), a trust, an estate, a corporation, or a limited liability company.

2.060 Contract Management**2.061 Contractor Personnel Qualifications**

All persons assigned by Contractor to the performance of Services under this Contract must be employees of Contractor or its majority-owned (directly or indirectly, at any tier) subsidiaries (or a State-approved Subcontractor) and must be fully qualified to perform the work assigned to them. Contractor must include a similar provision in any subcontract entered into with a Subcontractor. For the purposes of this Contract, independent contractors engaged by Contractor solely in a staff augmentation role must be treated by the State as if they were employees of Contractor for this Contract only; however, the State understands that the relationship between Contractor and Subcontractor is an independent contractor relationship.

2.062 Contractor Key Personnel

(a) The Contractor must provide the CCI with the names of the Key Personnel.

(b) Key Personnel must be dedicated as defined in the Statement of Work to the Project for its duration in the applicable Statement of Work with respect to other individuals designated as Key Personnel for that Statement of Work.



(c) The State reserves the right to recommend and approve in writing the initial assignment, as well as any proposed reassignment or replacement, of any Key Personnel. Before assigning an individual to any Key Personnel position, Contractor must notify the State of the proposed assignment, must introduce the individual to the appropriate State representatives, and must provide the State with a resume and any other information about the individual reasonably requested by the State. The State reserves the right to interview the individual before granting written approval. In the event the State finds a proposed individual unacceptable, the State must provide a written explanation including reasonable detail outlining the reasons for the rejection.

(d) Contractor must not remove any Key Personnel from their assigned roles on this Contract without the prior written consent of the State. The Contractor's removal of Key Personnel without the prior written consent of the State is an unauthorized removal ("Unauthorized Removal"). Unauthorized Removals does not include replacing Key Personnel for reasons beyond the reasonable control of Contractor, including illness, disability, leave of absence, personal emergency circumstances, resignation, or for cause termination of the Key Personnel's employment. Unauthorized Removals does not include replacing Key Personnel because of promotions or other job movements allowed by Contractor personnel policies or Collective Bargaining Agreement(s) as long as the State receives prior written notice before shadowing occurs and Contractor provides 30 days of shadowing unless parties agree to a different time period. The Contractor with the State must review any Key Personnel replacements and appropriate transition planning must be established. Any Unauthorized Removal may be considered by the State to be a material breach of this Contract, in respect of which the State may elect to exercise its termination and cancellation rights.

(e) The Contractor must notify the CCI and the Contract Administrator at least 10 business days before redeploying non-Key Personnel, who are dedicated to primarily to the Project, to other projects. If the State does not object to the redeployment by its scheduled date, the Contractor may then redeploy the non-Key Personnel.

2.063 Re-assignment of Personnel at the State's Request

The State reserves the right to require the removal from the Project of Contractor personnel found, in the judgment of the State, to be unacceptable. The State's request must be written with reasonable detail outlining the reasons for the removal request. Additionally, the State's request must be based on legitimate, good-faith reasons. Replacement personnel for the removed person must be fully qualified for the position. If the State exercises this right, and the Contractor cannot immediately replace the removed personnel, the State agrees to an equitable adjustment in schedule or other terms that may be affected by the State's required removal. If any incident with removed personnel results in delay not reasonably anticipatable under the circumstances and which is attributable to the State, the applicable SLAs for the affected Service will not be counted for a time as agreed to by the parties.

2.064 Contractor Personnel Location – Deleted – NA

2.065 Contractor Identification

Contractor employees must be clearly identifiable while on State property by wearing a State-issued badge, as required. Contractor employees are required to clearly identify themselves and the company they work for whenever making contact with State personnel by telephone or other means.

2.066 Cooperation with Third Parties

Contractor must cause its personnel and the personnel of any Subcontractors to cooperate with the State and its agents and other contractors including the State's Quality Assurance personnel. As reasonably requested by the State in writing, the Contractor must provide to the State's agents and other contractors reasonable access to Contractor's Project personnel, systems and facilities to the extent the access relates to activities specifically associated with this Contract and will not interfere or jeopardize the safety or operation of the systems or facilities. The State acknowledges that Contractor's time schedule for this Contract is very specific and must not unnecessarily or unreasonably interfere with, delay, or otherwise impede Contractor's performance under this Contract with the requests for access.

2.067 Contractor Return of State Equipment/Resources

The Contractor must return to the State any State-furnished equipment, facilities, and other resources when no longer required for this Contract in the same condition as when provided by the State, reasonable wear and tear excepted.

**2.068 Contract Management Responsibilities**

The Contractor must assume responsibility for all contractual activities, whether or not that Contractor performs them. Further, the State considers the Contractor to be the sole point of contact with regard to contractual matters, including payment of any and all charges resulting from this Contract. If any part of the work is to be subcontracted, this Contract must include a list of Subcontractors, including firm name and address, contact person and a complete description of work to be subcontracted. The State reserves the right to approve Subcontractors and to require the Contractor to replace Subcontractors found to be unacceptable. The Contractor is totally responsible for adherence by the Subcontractor to all provisions of this Contract. Any change in Subcontractors must be approved by the State, in writing, prior to such change.

2.070 Subcontracting by Contractor**2.071 Contractor Full Responsibility**

Contractor has full responsibility for the successful performance and completion of all of the Services and Deliverables. The State will consider Contractor to be the sole point of contact with regard to all contractual matters under this Contract, including payment of any and all charges for Services and Deliverables.

2.072 State Consent to Delegation

Contractor must not delegate any duties under this Contract to a Subcontractor unless the Department of Management and Budget, Purchasing Operations has given written consent to such delegation. The State reserves the right of prior written approval of all Subcontractors and to require Contractor to replace any Subcontractors found, in the reasonable judgment of the State, to be unacceptable. The State's request must be written with reasonable detail outlining the reasons for the removal request. Additionally, the State's request must be based on legitimate, good-faith reasons. Replacement Subcontractor(s) for the removed Subcontractor must be fully qualified for the position. If the State exercises this right, and the Contractor cannot immediately replace the removed Subcontractor, the State will agree to an equitable adjustment in schedule or other terms that may be affected by the State's required removal. If any such incident with a removed Subcontractor results in delay not reasonable anticipatable under the circumstances and which is attributable to the State, the applicable SLA for the affected Work will not be counted for a time agreed upon by the parties.

2.073 Subcontractor Bound to Contract

In any subcontracts entered into by Contractor for the performance of the Services, Contractor must require the Subcontractor, to the extent of the Services to be performed by the Subcontractor, to be bound to Contractor by the terms of this Contract and to assume toward Contractor all of the obligations and responsibilities that Contractor, by this Contract, assumes toward the State. The State reserves the right to receive copies of and review all subcontracts, although Contractor may delete or mask any proprietary information, including pricing, contained in such contracts before providing them to the State. The management of any Subcontractor is the responsibility of Contractor, and Contractor must remain responsible for the performance of its Subcontractors to the same extent as if Contractor had not subcontracted such performance. Contractor must make all payments to Subcontractors or suppliers of Contractor. Except as otherwise agreed in writing by the State and Contractor, the State will not be obligated to direct payments for the Services other than to Contractor. The State's written approval of any Subcontractor engaged by Contractor to perform any obligation under this Contract will not relieve Contractor of any obligations or performance required under this Contract.

2.074 Flow Down

Except where specifically approved in writing by the State on a case-by-case basis, Contractor must flow down the obligations in **Sections 2.031, 2.060, 2.100, 2.110, 2.120, 2.130, 2.200** in all of its agreements with any Subcontractors.

2.075 Competitive Selection

The Contractor must select Subcontractors (including suppliers) on a competitive basis to the maximum practical extent consistent with the objectives and requirements of this Contract.

2.080 State Responsibilities**2.081 Equipment**

The State will provide only the equipment and resources identified in the Statements of Work and other Contract Exhibits.

2.082 Facilities – Deleted – NA



2.090 Security

2.091 Background Checks

On a case-by-case basis, the State may investigate the Contractor's personnel before they may have access to State facilities and systems. The scope of the background check is at the discretion of the State and the results will be used to determine Contractor personnel eligibility for working within State facilities and systems. The investigations will include Michigan State Police Background checks (ICHAT) and may include the National Crime Information Center (NCIC) Finger Prints. Proposed Contractor personnel may be required to complete and submit an RI-8 Fingerprint Card for the NCIC Finger Print Check. Any request for background checks will be initiated by the State and will be reasonably related to the type of work requested.

All Contractor personnel must comply with the State's security and acceptable use policies for State IT equipment and resources. See <http://www.michigan.gov/dit>. Furthermore, Contractor personnel must agree to the State's security and acceptable use policies before the Contractor personnel will be accepted as a resource to perform work for the State. The Contractor must present these documents to the prospective employee before the Contractor presents the individual to the State as a proposed resource. Contractor staff must comply with all Physical Security procedures in place within the facilities where they are working.

2.092 Security Breach Notification

If the Contractor breaches this Section, the Contractor must (i) promptly cure any deficiencies and (ii) comply with any applicable federal and state laws and regulations pertaining to unauthorized disclosures. Contractor and the State will cooperate to mitigate, to the extent practicable, the effects of any breach, intrusion, or unauthorized use or disclosure. Contractor must report to the State, in writing, any use or disclosure of Confidential Information, whether suspected or actual, other than as provided for by this Contract within 10 days of becoming aware of the use or disclosure or the shorter time period as is reasonable under the circumstances.

2.093 PCI Data Security Requirements – Deleted – NA

2.100 Confidentiality

2.101 Confidentiality

Contractor and the State each acknowledge that the other possesses, and will continue to possess, confidential information that has been developed or received by it. As used in this Section, "Confidential Information" of Contractor must mean all non-public proprietary information of Contractor (other than Confidential Information of the State as defined below) which is marked confidential, restricted, proprietary, or with a similar designation. "Confidential Information" of the State must mean any information which is retained in confidence by the State (or otherwise required to be held in confidence by the State under applicable federal, state and local laws and regulations) or which, in the case of tangible materials provided to Contractor by the State under its performance under this Contract, is marked as confidential, proprietary, or with a similar designation by the State. "Confidential Information" excludes any information (including this Contract) that is publicly available under the Michigan FOIA.

2.102 Protection and Destruction of Confidential Information

The State and Contractor must each use at least the same degree of care to prevent disclosing to third parties the Confidential Information of the other as it employs to avoid unauthorized disclosure, publication, or dissemination of its own confidential information of like character, but in no event less than reasonable care. Neither Contractor nor the State will (i) make any use of the Confidential Information of the other except as contemplated by this Contract, (ii) acquire any right in or assert any lien against the Confidential Information of the other, or (iii) if requested to do so, refuse for any reason to promptly return the other party's Confidential Information to the other party. Each party must limit disclosure of the other party's Confidential Information to employees and Subcontractors who must have access to fulfill the purposes of this Contract. Disclosure to, and use by, a Subcontractor is permissible where (A) use of a Subcontractor is authorized under this Contract, (B) the disclosure is necessary or otherwise naturally occurs in connection with work that is within the Subcontractor's scope of responsibility, and (C) Contractor obligates the Subcontractor in a written Contract to maintain the State's Confidential Information in confidence. At the State's request, any employee of Contractor and of any Subcontractor having access or continued access to the State's Confidential Information may be required to execute an acknowledgment that the employee has been advised of Contractor's and the Subcontractor's obligations under this Section and of the employee's obligation to Contractor or Subcontractor, as the case may be, to protect the Confidential Information from unauthorized use or disclosure.



Promptly upon termination or cancellation of this Contract for any reason, Contractor must certify to the State that Contractor has destroyed all State Confidential Information.

2.103 Exclusions

Notwithstanding the foregoing, the provisions of **Section 2.100** will not apply to any particular information which the State or Contractor can demonstrate (i) was, at the time of disclosure to it, in the public domain; (ii) after disclosure to it, is published or otherwise becomes part of the public domain through no fault of the receiving party; (iii) was in the possession of the receiving party at the time of disclosure to it without an obligation of confidentiality; (iv) was received after disclosure to it from a third party who had a lawful right to disclose the information to it without any obligation to restrict its further disclosure; or (v) was independently developed by the receiving party without reference to Confidential Information of the furnishing party. Further, the provisions of **Section 2.100** will not apply to any particular Confidential Information to the extent the receiving party is required by law to disclose the Confidential Information, provided that the receiving party (i) promptly provides the furnishing party with notice of the legal request, and (ii) assists the furnishing party in resisting or limiting the scope of the disclosure as reasonably requested by the furnishing party.

2.104 No Implied Rights

Nothing contained in this Section must be construed as obligating a party to disclose any particular Confidential Information to the other party, or as granting to or conferring on a party, expressly or impliedly, any right or license to the Confidential Information of the other party.

2.105 Respective Obligations

The parties' respective obligations under this Section must survive the termination or expiration of this Contract for any reason.

2.110 Records and Inspections

2.111 Inspection of Work Performed

The State's authorized representatives must at all reasonable times during normal business hours, and unannounced if deemed appropriate by the State, have the right to enter Contractor's premises, or any other places, where the Services are being performed, and must have access, upon reasonable request, to interim drafts of Deliverables or work-in-progress. The State's representatives must be allowed to inspect, monitor, or otherwise evaluate the work being performed and to the extent that the access will not reasonably interfere or jeopardize the safety or operation of the systems or facilities. Contractor must provide all reasonable facilities and assistance for the State's representatives.

2.112 Examination of Records

For seven years after the Contractor provides any work under this Contract (the "Audit Period"), the State may examine and copy any of Contractor's books, records, documents and papers pertinent to establishing Contractor's compliance with this Contract and with applicable laws and rules. The State may, at any reasonable time during normal business hours, and unannounced if deemed appropriate by the State, enter the Contractor's premises and examine the Contractor's books and records related to work performed under this Contract. The State does not have the right to review any information deemed confidential by the Contractor to the extent access would require the confidential information to become publicly available. This provision also applies to the books, records, accounts, documents and papers, in print or electronic form, of any parent, affiliated or subsidiary organization of Contractor, or any Subcontractor of Contractor performing services in connection with this Contract.

2.113 Retention of Records

Contractor must maintain at least until the end of the Audit Period, all pertinent financial and accounting records (including time sheets and payroll records, information pertaining to this Contract, and to the Services, equipment, and commodities provided under this Contract) pertaining to this Contract according to generally accepted accounting principals and other procedures specified in this Section. Financial and accounting records must be made available, upon request, to the State at any time during the Audit Period. If an audit, litigation, or other action involving Contractor's records is initiated before the end of the Audit Period, the records must be retained until all issues arising out of the audit, litigation, or other action are resolved or until the end of the Audit Period, whichever is later.

**2.114 Audit Resolution**

If necessary, the Contractor and the State will meet to review each audit report promptly after issuance. The Contractor must respond to each audit report in writing within 30 days from receipt of the report, unless a shorter response time is specified in the report. The Contractor and the State must develop, agree upon and monitor an action plan to promptly address and resolve any deficiencies, concerns, and/or recommendations in the audit report.

2.115 Errors

(a) If the audit demonstrates any errors in the documents provided to the State, then the amount in error must be reflected as a credit or debit on the next invoice and in subsequent invoices until the amount is paid or refunded in full. However, a credit or debit may not be carried for more than four invoices. If a balance remains after four invoices, then the remaining amount will be due as a payment or refund within 45 days of the last quarterly invoice that the balance appeared on or termination of this Contract, whichever is earlier.

(b) In addition to other available remedies, if the difference between the payment received and the correct payment amount is greater than 10 percent, then the Contractor must pay all of the reasonable costs of the audit.

2.120 Warranties**2.121 Warranties and Representations**

The Contractor represents and warrants:

(a) It is capable in all respects of fulfilling and must fulfill all of its obligations under this Contract. The performance of all obligations under this Contract must be provided in a timely, professional, and workman-like manner and must meet the performance and operational standards required under this Contract.

(b) These Contract Appendices, Attachments, and Exhibits identify the equipment and software and services necessary for the Deliverable(s) to perform and Services to operate in compliance with these Contract requirements and other standards of performance.

(c) It is the lawful owner or licensee of any Deliverable licensed or sold to the State by Contractor or developed by Contractor under this Contract, and Contractor has all of the rights necessary to convey to the State the ownership rights or licensed use, as applicable, of any and all Deliverables. None of the Deliverables provided by Contractor to the State under this Contract, nor their use by the State, will infringe the patent, copyright, trade secret, or other proprietary rights of any third party.

(d) If, under this Contract, Contractor procures any equipment, software or other Deliverable for the State (including equipment, software and other Deliverables manufactured, re-marketed or otherwise sold by Contractor under Contractor's name), then in addition to Contractor's other responsibilities with respect to the items in this Contract, Contractor must assign or otherwise transfer to the State or its designees, or afford the State the benefits of, any manufacturer's warranty for the Deliverable.

(e) This Contract signatory has the power and authority, including any necessary corporate authorizations, necessary to enter into this Contract, on behalf of Contractor.

(f) It is qualified and registered to transact business in all locations where required.

(g) Neither the Contractor nor any Affiliates, nor any employee of either, has, must have, or must acquire, any contractual, financial, business, or other interest, direct or indirect, that would conflict in any manner or degree with Contractor's performance of its duties and responsibilities to the State under this Contract or otherwise create an appearance of impropriety with respect to the award or performance of this Contract. Contractor must notify the State about the nature of the conflict or appearance of impropriety within two days of learning about it.

(h) Neither Contractor nor any Affiliates, nor any employee of either has accepted or must accept anything of value based on an understanding that the actions of the Contractor or Affiliates or employee on behalf of the State would be influenced. Contractor must not attempt to influence any State employee by the direct or indirect offer of anything of value.



(i) Neither Contractor nor any Affiliates, nor any employee of either has paid or agreed to pay any person, other than bona fide employees and consultants working solely for Contractor or the Affiliate, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this Contract.

(j) The prices proposed by Contractor were arrived at independently, without consultation, communication, or agreement with any other Bidder for the purpose of restricting competition; the prices quoted were not knowingly disclosed by Contractor to any other Bidder; and no attempt was made by Contractor to induce any other person to submit or not submit a proposal for the purpose of restricting competition.

(k) All financial statements, reports, and other information furnished by Contractor to the State as part of its response to the RFP or otherwise in connection with the award of this Contract fairly and accurately represent the business, properties, financial condition, and results of operations of Contractor as of the respective dates, or for the respective periods, covered by the financial statements, reports, other information. Since the respective dates or periods covered by the financial statements, reports, or other information, there have been no material adverse change in the business, properties, financial condition, or results of operations of Contractor.

(l) All written information furnished to the State by or for the Contractor in connection with this Contract, including its bid, is true, accurate, and complete, and contains no untrue statement of material fact or omits any material fact necessary to make the information not misleading.

(m) It is not in material default or breach of any other contract or agreement that it may have with the State or any of its departments, commissions, boards, or agencies. Contractor further represents and warrants that it has not been a party to any contract with the State or any of its departments that was terminated by the State or the department within the previous five years for the reason that Contractor failed to perform or otherwise breached an obligation of that contract.

(n) If any of the certifications, representations, or disclosures made in the Contractor's original bid response change after this Contract award, the Contractor is required to report those changes immediately to the Department of Management and Budget, Purchasing Operations.

2.122 Warranty of Merchantability – Deleted – NA

2.123 Warranty of Fitness for a Particular Purpose – Deleted – NA

2.124 Warranty of Title – Deleted – NA

2.125 Equipment Warranty – Deleted – NA

2.126 Equipment to be New – Deleted – NA

2.127 Prohibited Products – Deleted – NA

2.128 Consequences for Breach

In addition to any remedies available in law, if the Contractor breaches any of the warranties contained in this section, the breach may be considered as a default in the performance of a material obligation of this Contract.

2.130 Insurance

2.131 Liability Insurance

The Contractor must provide proof of the minimum levels of insurance coverage as indicated below. The insurance must protect the State from claims which may arise out of or result from the Contractor's performance of Services under the terms of this Contract, whether the Services are performed by the Contractor, or by any Subcontractor, or by anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable.

The Contractor waives all rights against the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees and agents for recovery of damages to the extent these damages are covered by the insurance policies the Contractor is required to maintain under this Contract.



All insurance coverage's provided relative to this Contract/Purchase Order are PRIMARY and NON-CONTRIBUTING to any comparable liability insurance (including self-insurances) carried by the State.

The insurance must be written for not less than any minimum coverage specified in this Contract or required by law, whichever is greater.

The insurers selected by Contractor must have an A.M. Best rating of A or better, or as otherwise approved in writing by the State, or if the ratings are no longer available, with a comparable rating from a recognized insurance rating agency. All policies of insurance required in this Contract must be issued by companies that have been approved to do business in the State. See www.michigan.gov/deleg.

Where specific limits are shown, they are the minimum acceptable limits. If Contractor's policy contains higher limits, the State must be entitled to coverage to the extent of the higher limits.

The Contractor is required to pay for and provide the type and amount of insurance checked below:

1. Commercial General Liability with the following minimum coverage:

\$2,000,000 General Aggregate Limit other than Products/Completed Operations
\$2,000,000 Products/Completed Operations Aggregate Limit
\$1,000,000 Personal & Advertising Injury Limit
\$1,000,000 Each Occurrence Limit

The Contractor must list the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees and agents as ADDITIONAL INSUREDS on the Commercial General Liability certificate. The Contractor also agrees to provide evidence that insurance policies contain a waiver of subrogation by the insurance company.

2. If a motor vehicle is used to provide services or products under this Contract, the Contractor must have vehicle liability insurance on any auto including owned, hired and non-owned vehicles used in Contractor's business for bodily injury and property damage as required by law.

The Contractor must list the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees and agents as ADDITIONAL INSUREDS on the vehicle liability certificate. The Contractor also agrees to provide evidence that insurance policies contain a waiver of subrogation by the insurance company.

3. Workers' compensation coverage must be provided according to applicable laws governing the employees and employers work activities in the state of the Contractor's domicile. If the applicable coverage is provided by a self-insurer, proof must be provided of approved self-insured authority by the jurisdiction of domicile. For employees working outside of the state of qualification, Contractor must provide appropriate certificates of insurance proving mandated coverage levels for the jurisdictions where the employees' activities occur.

Any certificates of insurance received must also provide a list of states where the coverage is applicable.

The Contractor also agrees to provide evidence that insurance policies contain a waiver of subrogation by the insurance company. This provision must not be applicable where prohibited or limited by the laws of the jurisdiction in which the work is to be performed.

4. Employers liability insurance with the following minimum limits:

\$100,000 each accident
\$100,000 each employee by disease
\$500,000 aggregate disease

5. Employee Fidelity, including Computer Crimes, insurance naming the State as a loss payee, providing coverage for direct loss to the State and any legal liability of the State arising out of or related to fraudulent or dishonest acts committed by the employees of Contractor or its Subcontractors, acting alone or in collusion with others, in a minimum amount of \$1,000,000.00 with a maximum deductible of \$50,000.00.



6. Professional Liability (Errors and Omissions) Insurance with the following minimum coverage: \$1,000,000.00 each occurrence and \$3,000,000.00 annual aggregate.

7. Fire and Personal Property Insurance covering against any loss or damage to the office space used by Contractor for any reason under this Contract, and the equipment, software and other contents of the office space, including without limitation, those contents used by Contractor to provide the Services to the State, up to its replacement value, where the office space and its contents are under the care, custody and control of Contractor. The policy must cover all risks of direct physical loss or damage, including without limitation, flood and earthquake coverage and coverage for computer hardware and software. The State must be endorsed on the policy as a loss payee as its interests appear.

2.132 Subcontractor Insurance Coverage

Except where the State has approved in writing a Contractor subcontract with other insurance provisions, Contractor must require all of its Subcontractors under this Contract to purchase and maintain the insurance coverage as described in this Section for the Contractor in connection with the performance of work by those Subcontractors. Alternatively, Contractor may include any Subcontractors under Contractor's insurance on the coverage required in this Section. Subcontractor must fully comply with the insurance coverage required in this Section. Failure of Subcontractor to comply with insurance requirements does not limit Contractor's liability or responsibility.

2.133 Certificates of Insurance and Other Requirements

Contractor must furnish to DMB-Purchasing Operations, certificate(s) of insurance verifying insurance coverage or providing satisfactory evidence of self-insurance as required in this Section (the "Certificates"). The Certificate must be on the standard "accord" form or equivalent. **THIS CONTRACT OR PURCHASE ORDER NO. MUST BE SHOWN ON THE CERTIFICATE OF INSURANCE TO ASSURE CORRECT FILING.** All Certificate(s) are to be prepared and submitted by the Insurance Provider. All Certificate(s) must contain a provision indicating that coverages afforded under the policies **MUST NOT BE CANCELLED, MATERIALLY CHANGED, OR NOT RENEWED** without 30 days prior written notice, except for 10 days for non-payment of premium, having been given to the Director of Purchasing Operations, Department of Management and Budget. The notice must include this Contract or Purchase Order number affected. Before this Contract is signed, and not less than 20 days before the insurance expiration date every year thereafter, the Contractor must provide evidence that the State and its agents, officers and employees are listed as additional insureds under each commercial general liability and commercial automobile liability policy. In the event the State approves the representation of the State by the insurer's attorney, the attorney may be required to be designated as a Special Assistant Attorney General by the Attorney General of the State of Michigan.

The Contractor must maintain all required insurance coverage throughout the term of this Contract and any extensions and, in the case of claims-made Commercial General Liability policies, must secure tail coverage for at least three years following the expiration or termination for any reason of this Contract. The minimum limits of coverage specified above are not intended, and must not be construed, to limit any liability or indemnity of Contractor under this Contract to any indemnified party or other persons. Contractor is responsible for all deductibles with regard to the insurance. If the Contractor fails to pay any premium for required insurance as specified in this Contract, or if any insurer cancels or significantly reduces any required insurance as specified in this Contract without the State's written consent, then the State may, after the State has given the Contractor at least 30 days written notice, pay the premium or procure similar insurance coverage from another company or companies. The State may deduct any part of the cost from any payment due the Contractor, or the Contractor must pay that cost upon demand by the State.

2.140 Indemnification

2.141 General Indemnification

To the extent permitted by law, the Contractor must indemnify, defend and hold harmless the State from liability, including all claims and losses, and all related costs and expenses (including reasonable attorneys' fees and costs of investigation, litigation, settlement, judgments, interest and penalties), accruing or resulting to any person, firm or corporation that may be injured or damaged by the Contractor in the performance of this Contract and that are attributable to the negligence or tortious acts of the Contractor or any of its Subcontractors, or by anyone else for whose acts any of them may be liable.

2.142 Code Indemnification

To the extent permitted by law, the Contractor must indemnify, defend and hold harmless the State from any claim, loss, or expense arising from Contractor's breach of the No Surreptitious Code Warranty.

**2.143 Employee Indemnification**

In any claims against the State of Michigan, its departments, divisions, agencies, sections, commissions, officers, employees and agents, by any employee of the Contractor or any of its Subcontractors, the indemnification obligation under this Contract must not be limited in any way by the amount or type of damages, compensation or benefits payable by or for the Contractor or any of its Subcontractors under worker's disability compensation acts, disability benefit acts or other employee benefit acts. This indemnification clause is intended to be comprehensive. Any overlap in provisions, or the fact that greater specificity is provided as to some categories of risk, is not intended to limit the scope of indemnification under any other provisions.

2.144 Patent/Copyright Infringement Indemnification

To the extent permitted by law, the Contractor must indemnify, defend and hold harmless the State from and against all losses, liabilities, damages (including taxes), and all related costs and expenses (including reasonable attorneys' fees and costs of investigation, litigation, settlement, judgments, interest and penalties) incurred in connection with any action or proceeding threatened or brought against the State to the extent that the action or proceeding is based on a claim that any piece of equipment, software, commodity or service supplied by the Contractor or its Subcontractors, or the operation of the equipment, software, commodity or service, or the use or reproduction of any documentation provided with the equipment, software, commodity or service infringes any United States patent, copyright, trademark or trade secret of any person or entity, which is enforceable under the laws of the United States.

In addition, should the equipment, software, commodity, or service, or its operation, become or in the State's or Contractor's opinion be likely to become the subject of a claim of infringement, the Contractor must at the Contractor's sole expense (i) procure for the State the right to continue using the equipment, software, commodity or service or, if the option is not reasonably available to the Contractor, (ii) replace or modify to the State's satisfaction the same with equipment, software, commodity or service of equivalent function and performance so that it becomes non-infringing, or, if the option is not reasonably available to Contractor, (iii) accept its return by the State with appropriate credits to the State against the Contractor's charges and reimburse the State for any losses or costs incurred as a consequence of the State ceasing its use and returning it.

Notwithstanding the foregoing, the Contractor has no obligation to indemnify or defend the State for, or to pay any costs, damages or attorneys' fees related to, any claim based upon (i) equipment developed based on written specifications of the State; (ii) use of the equipment in a configuration other than implemented or approved in writing by the Contractor, including, but not limited to, any modification of the equipment by the State; or (iii) the combination, operation, or use of the equipment with equipment or software not supplied by the Contractor under this Contract.

2.145 Continuation of Indemnification Obligations

The Contractor's duty to indemnify under this Section continues in full force and effect, notwithstanding the expiration or early cancellation of this Contract, with respect to any claims based on facts or conditions that occurred before expiration or cancellation.

2.146 Indemnification Procedures

The procedures set forth below must apply to all indemnity obligations under this Contract.

(a) After the State receives notice of the action or proceeding involving a claim for which it will seek indemnification, the State must promptly notify Contractor of the claim in writing and take or assist Contractor in taking, as the case may be, any reasonable action to avoid the imposition of a default judgment against Contractor. No failure to notify the Contractor relieves the Contractor of its indemnification obligations except to the extent that the Contractor can prove damages attributable to the failure. Within 10 days following receipt of written notice from the State relating to any claim, the Contractor must notify the State in writing whether Contractor agrees to assume control of the defense and settlement of that claim (a "Notice of Election"). After notifying Contractor of a claim and before the State receiving Contractor's Notice of Election, the State is entitled to defend against the claim, at the Contractor's expense, and the Contractor will be responsible for any reasonable costs incurred by the State in defending against the claim during that period.

(b) If Contractor delivers a Notice of Election relating to any claim: (i) the State is entitled to participate in the defense of the claim and to employ counsel at its own expense to assist in the handling of the claim and to monitor and advise the State about the status and progress of the defense; (ii) the Contractor must, at the request of the State, demonstrate to the reasonable satisfaction of the State, the Contractor's financial ability to carry out its defense and indemnity obligations under this Contract; (iii) the Contractor must periodically advise the State about the status and progress of the defense and must obtain the prior written approval of the State before entering into any settlement of the claim or ceasing to defend against the claim,



and (iv) to the extent that any principles of Michigan governmental or public law may be involved or challenged, the State has the right, at its own expense, to control the defense of that portion of the claim involving the principles of Michigan governmental or public law. But the State may retain control of the defense and settlement of a claim by notifying the Contractor in writing within 10 days after the State's receipt of Contractor's information requested by the State under clause (ii) of this paragraph if the State determines that the Contractor has failed to demonstrate to the reasonable satisfaction of the State the Contractor's financial ability to carry out its defense and indemnity obligations under this Section. Any litigation activity on behalf of the State, or any of its subdivisions under this Section, must be coordinated with the Department of Attorney General. In the event the insurer's attorney represents the State under this Section, the insurer's attorney may be required to be designated as a Special Assistant Attorney General by the Attorney General of the State of Michigan.

(c) If Contractor does not deliver a Notice of Election relating to any claim of which it is notified by the State as provided above, the State may defend the claim in the manner as it may deem appropriate, at the cost and expense of Contractor. If it is determined that the claim was one against which Contractor was required to indemnify the State, upon request of the State, Contractor must promptly reimburse the State for all the reasonable costs and expenses.

2.150 Termination/Cancellation

2.151 Notice and Right to Cure

If the Contractor breaches this Contract, and the State, in its sole discretion, determines that the breach is curable, then the State must provide the Contractor with written notice of the breach and a time period (not less than 30 days) to cure the Breach. The notice of breach and opportunity to cure is inapplicable for successive or repeated breaches or if the State determines in its sole discretion that the breach poses a serious and imminent threat to the health or safety of any person or the imminent loss, damage, or destruction of any real or tangible personal property.

2.152 Termination for Cause

(a) The State may terminate this Contract, for cause, by notifying the Contractor in writing, if the Contractor (i) breaches any of its material duties or obligations under this Contract (including a Chronic Failure to meet any particular SLA), or (ii) fails to cure a breach within the time period specified in the written notice of breach provided by the State

(b) If this Contract is terminated for cause, the Contractor must pay all costs incurred by the State in terminating this Contract, including but not limited to, State administrative costs, reasonable attorneys' fees and court costs, and any reasonable additional costs the State may incur to procure the Services/Deliverables required by this Contract from other sources. Re-procurement costs are not consequential, indirect or incidental damages, and cannot be excluded by any other terms otherwise included in this Contract, provided the costs are not in excess of 50 percent more than the prices for the Service/Deliverables provided under this Contract.

(c) If the State chooses to partially terminate this Contract for cause, charges payable under this Contract will be equitably adjusted to reflect those Services/Deliverables that are terminated and the State must pay for all Services/Deliverables for which Final Acceptance has been granted provided up to the termination date. Services and related provisions of this Contract that are terminated for cause must cease on the effective date of the termination.

(d) If the State terminates this Contract for cause under this Section, and it is determined, for any reason, that Contractor was not in breach of this Contract under the provisions of this section, that termination for cause must be deemed to have been a termination for convenience, effective as of the same date, and the rights and obligations of the parties must be limited to that otherwise provided in this Contract for a termination for convenience.

2.153 Termination for Convenience

The State may terminate this Contract for its convenience, in whole or part, if the State determines that a termination is in the State's best interest. Reasons for the termination must be left to the sole discretion of the State and may include, but not necessarily be limited to (a) the State no longer needs the Services or products specified in this Contract, (b) relocation of office, program changes, changes in laws, rules, or regulations make implementation of the Services no longer practical or feasible, (c) unacceptable prices for Additional Services or New Work requested by the State, or (d) falsification or misrepresentation, by inclusion or non-inclusion, of information material to a response to any RFP issued by the State. The State may terminate this Contract for its convenience, in whole or in part, by giving Contractor written notice at least 30 days before the date of termination.



If the State chooses to terminate this Contract in part, the charges payable under this Contract must be equitably adjusted to reflect those Services/Deliverables that are terminated. Services and related provisions of this Contract that are terminated for cause must cease on the effective date of the termination.

2.154 Termination for Non-Appropriation

(a) Contractor acknowledges that, if this Contract extends for several fiscal years, continuation of this Contract is subject to appropriation or availability of funds for this Contract. If funds to enable the State to effect continued payment under this Contract are not appropriated or otherwise made available, the State must terminate this Contract and all affected Statements of Work, in whole or in part, at the end of the last period for which funds have been appropriated or otherwise made available by giving written notice of termination to Contractor. The State must give Contractor at least 30 days advance written notice of termination for non-appropriation or unavailability (or the time as is available if the State receives notice of the final decision less than 30 days before the funding cutoff).

(b) If funding for this Contract is reduced by law, or funds to pay Contractor for the agreed-to level of the Services or production of Deliverables to be provided by Contractor are not appropriated or otherwise unavailable, the State may, upon 30 days written notice to Contractor, reduce the level of the Services or the change the production of Deliverables in the manner and for the periods of time as the State may elect. The charges payable under this Contract will be equitably adjusted to reflect any equipment, services or commodities not provided by reason of the reduction.

(c) If the State terminates this Contract, eliminates certain Deliverables, or reduces the level of Services to be provided by Contractor under this Section, the State must pay Contractor for all Work-in-Process performed through the effective date of the termination or reduction in level, as the case may be and as determined by the State, to the extent funds are available. This Section will not preclude Contractor from reducing or stopping Services/Deliverables or raising against the State in a court of competent jurisdiction, any claim for a shortfall in payment for Services performed or Deliverables finally accepted before the effective date of termination.

2.155 Termination for Criminal Conviction

The State may terminate this Contract immediately and without further liability or penalty in the event Contractor, an officer of Contractor, or an owner of a 25 percent or greater share of Contractor is convicted of a criminal offense related to a State, public or private contract or subcontract.

2.156 Termination for Approvals Rescinded

The State may terminate this Contract if any final administrative or judicial decision or adjudication disapproves a previously approved request for purchase of personal services under Constitution 1963, Article 11, § 5, and Civil Service Rule 7-1. In that case, the State must pay the Contractor for only the work completed to that point under this Contract. Termination may be in whole or in part and may be immediate as of the date of the written notice to Contractor or may be effective as of the date stated in the written notice.

2.157 Rights and Obligations upon Termination

(a) If the State terminates this Contract for any reason, the Contractor must (a) stop all work as specified in the notice of termination, (b) take any action that may be necessary, or that the State may direct, for preservation and protection of Deliverables or other property derived or resulting from this Contract that may be in Contractor's possession, (c) return all materials and property provided directly or indirectly to Contractor by any entity, agent or employee of the State, (d) transfer title in, and deliver to, the State, unless otherwise directed, all Deliverables intended to be transferred to the State at the termination of this Contract and which are resulting from this Contract (which must be provided to the State on an "As-Is" basis except to the extent the amounts paid by the State in respect of the items included compensation to Contractor for the provision of warranty services in respect of the materials), and (e) take any action to mitigate and limit any potential damages, or requests for Contractor adjustment or termination settlement costs, to the maximum practical extent, including terminating or limiting as otherwise applicable those subcontracts and outstanding orders for material and supplies resulting from the terminated Contract.

(b) If the State terminates this Contract before its expiration for its own convenience, the State must pay Contractor for all charges due for Services provided before the date of termination and, if applicable, as a separate item of payment under this Contract, for Work In Process, on a percentage of completion basis at the level of completion determined by the State. All completed or partially completed Deliverables prepared by Contractor under this Contract, at the option of the State, becomes the State's property, and Contractor is entitled to receive equitable fair compensation for the Deliverables. Regardless of the basis for the termination, the State is not obligated to pay, or otherwise compensate, Contractor for any lost expected future profits, costs or expenses incurred with respect to Services not actually performed for the State.



(c) Upon a good faith termination, the State may assume, at its option, any subcontracts and agreements for Services and Deliverables provided under this Contract, and may further pursue completion of the Services/Deliverables under this Contract by replacement contract or otherwise as the State may in its sole judgment deem expedient.

2.158 Reservation of Rights

Any termination of this Contract or any Statement of Work issued under it by a party must be with full reservation of, and without prejudice to, any rights or remedies otherwise available to the party with respect to any claims arising before or as a result of the termination.

2.160 Termination by Contractor – Deleted – NA

2.170 Transition Responsibilities

2.171 Contractor Transition Responsibilities

If the State terminates this Contract, for convenience or cause, or if this Contract is otherwise dissolved, voided, rescinded, nullified, expires or rendered unenforceable, the Contractor agrees to comply with direction provided by the State to assist in the orderly transition of equipment, services, software, leases, etc. to the State or a third party designated by the State. If this Contract expires or terminates, the Contractor agrees to make all reasonable efforts to effect an orderly transition of services within a reasonable period of time that in no event will exceed 90 days. These efforts must include, but are not limited to, those listed in **Sections 2.171, 2.172, 2.173, 2.174, and 2.175.**

2.172 Contractor Personnel Transition

The Contractor must work with the State, or a specified third party, to develop a transition plan setting forth the specific tasks and schedule to be accomplished by the parties to effect an orderly transition. The Contractor must allow as many personnel as practicable to remain on the job to help the State, or a specified third party, maintain the continuity and consistency of the services required by this Contract. In addition, during or following the transition period, in the event the State requires the Services of the Contractor's Subcontractors or vendors, as necessary to meet its needs, Contractor agrees to reasonably, and with good-faith, work with the State to use the Services of Contractor's Subcontractors or vendors. Contractor must notify all of Contractor's subcontractors of procedures to be followed during transition.

2.173 Contractor Information Transition

The Contractor agrees to provide reasonable detailed specifications for all Services/Deliverables needed by the State, or specified third party, to properly provide the Services/Deliverables required under this Contract. The Contractor must provide the State with asset management data generated from the inception of this Contract through the date on which the Contractor is terminated in a comma-delineated format unless otherwise requested by the State. The Contractor must deliver to the State any remaining owed reports and documentation still in Contractor's possession subject to appropriate payment by the State.

2.174 Contractor Software Transition

The Contractor must reasonably assist the State in the acquisition of any Contractor software required to perform the Services/use the Deliverables under this Contract. This must include any documentation being used by the Contractor to perform the Services under this Contract. If the State transfers any software licenses to the Contractor, those licenses must, upon expiration of this Contract, transfer back to the State at their current revision level. Upon notification by the State, Contractor may be required to freeze all non-critical changes to Deliverables/Services.

2.175 Transition Payments

If the transition results from a termination for any reason, reimbursement must be governed by the termination provisions of this Contract. If the transition results from expiration, the Contractor will be reimbursed for all reasonable transition costs (i.e. costs incurred within the agreed period after Contract expiration that result from transition operations) at the rates agreed upon by the State. The Contractor must prepare an accurate accounting from which the State and Contractor may reconcile all outstanding accounts.

2.176 State Transition Responsibilities

In the event that this Contract is terminated, dissolved, voided, rescinded, nullified, or otherwise rendered unenforceable, the State agrees to perform the following obligations, and any others upon which the State and the Contractor agree:

- (a) Reconciling all accounts between the State and the Contractor;
- (b) Completing any pending post-project reviews.



2.180 Stop Work

2.181 Stop Work Orders

The State may, at any time, by written stop work order to Contractor, require that Contractor stop all, or any part, of the work called for by this Contract for a period of up to 90 calendar days after the stop work order is delivered to Contractor, and for any further period to which the parties may agree. The stop work order must be identified as a stop work order and must indicate that it is issued under this **Section 2.180**. Upon receipt of the stop work order, Contractor must immediately comply with its terms and take all reasonable steps to minimize incurring costs allocable to the work covered by the stop work order during the period of work stoppage. Within the period of the stop work order, the State must either: (a) cancel the stop work order; or (b) terminate the work covered by the stop work order as provided in **Section 2.150**.

2.182 Cancellation or Expiration of Stop Work Order

The Contractor must resume work if the State cancels a Stop Work Order or if it expires. The parties will agree upon an equitable adjustment in the delivery schedule, this Contract price(s), or both, and this Contract must be modified, in writing, accordingly, if: (a) the stop work order results in an increase in the time required for, or in Contractor's costs properly allocable to, the performance of any part of this Contract; and (b) Contractor asserts its right to an equitable adjustment within 30 calendar days after the end of the period of work stoppage; provided that, if the State decides the facts justify the action, the State may receive and act upon a Contractor proposal submitted at any time before final payment under this Contract. Any adjustment must conform to the requirements of **Section 2.024**.

2.183 Allowance of Contractor Costs

If the stop work order is not canceled and the work covered by the stop work order is terminated for reasons other than material breach, the termination must be deemed to be a termination for convenience under **Section 2.150**, and the State will pay reasonable costs resulting from the stop work order in arriving at the termination settlement. For the avoidance of doubt, the State is not liable to Contractor for loss of profits because of a stop work order issued under this **Section 2.180**.

2.190 Dispute Resolution

2.191 In General

Any claim, counterclaim, or dispute between the State and Contractor arising out of or relating to this Contract or any Statement of Work must be resolved as follows. For all Contractor claims seeking an increase in the amounts payable to Contractor under this Contract, or the time for Contractor's performance, Contractor must submit a letter, together with all data supporting the claims, executed by Contractor's Contract Administrator or the Contract Administrator's designee certifying that (a) the claim is made in good faith, (b) the amount claimed accurately reflects the adjustments in the amounts payable to Contractor or the time for Contractor's performance for which Contractor believes the State is liable and covers all costs of every type to which Contractor is entitled from the occurrence of the claimed event, and (c) the claim and the supporting data are current and complete to Contractor's best knowledge and belief.

2.192 Informal Dispute Resolution

(a) All disputes between the parties must be resolved under the Contract Management procedures in this Contract. If the parties are unable to resolve any disputes after compliance with the processes, the parties must meet with the Director of Purchasing Operations, DMB, or designee, for the purpose of attempting to resolve the dispute without the need for formal legal proceedings, as follows:

- (i) The representatives of Contractor and the State must meet as often as the parties reasonably deem necessary to gather and furnish to each other all information with respect to the matter in issue which the parties believe to be appropriate and germane in connection with its resolution. The representatives must discuss the problem and negotiate in good faith in an effort to resolve the dispute without the necessity of any formal proceeding.
- (ii) During the course of negotiations, all reasonable requests made by one party to another for non-privileged information reasonably related to this Contract must be honored in order that each of the parties may be fully advised of the other's position.
- (iii) The specific format for the discussions will be left to the discretion of the designated State and Contractor representatives, but may include the preparation of agreed upon statements of fact or written statements of position.
- (iv) Following the completion of this process within 60 calendar days, the Director of Purchasing Operations, DMB, or designee, must issue a written opinion regarding the issue(s) in dispute within 30 calendar days. The opinion regarding the dispute must be considered the State's final action and the exhaustion of administrative remedies.



(b) This Section must not be construed to prevent either party from instituting, and a party is authorized to institute, formal proceedings earlier to avoid the expiration of any applicable limitations period, to preserve a superior position with respect to other creditors, or under **Section 2.193**.

(c) The State will not mediate disputes between the Contractor and any other entity, except state agencies, concerning responsibility for performance of work under this Contract.

2.193 Injunctive Relief

The only circumstance in which disputes between the State and Contractor will not be subject to the provisions of **Section 2.192** is where a party makes a good faith determination that a breach of the terms of this Contract by the other party will be so immediate, so large or severe and so incapable of adequate redress after the fact that a temporary restraining order or other immediate injunctive relief is the only adequate remedy.

2.194 Continued Performance

Each party agrees to continue performing its obligations under this Contract while a dispute is being resolved except to the extent the issue in dispute precludes performance (dispute over payment must not be deemed to preclude performance) and without limiting either party's right to terminate this Contract as provided in **Section 2.150**, as the case may be.

2.200 Federal and State Contract Requirements

2.201 Nondiscrimination

In the performance of this Contract, Contractor agrees not to discriminate against any employee or applicant for employment, with respect to his or her hire, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment, because of race, color, religion, national origin, ancestry, age, sex, height, weight, marital status, or physical or mental disability. Contractor further agrees that every subcontract entered into for the performance of this Contract or any purchase order resulting from this Contract must contain a provision requiring non-discrimination in employment, as specified here, binding upon each Subcontractor. This covenant is required under the Elliot Larsen Civil Rights Act, 1976 PA 453, MCL 37.2101, et seq., and the Persons with Disabilities Civil Rights Act, 1976 PA 220, MCL 37.1101, et seq., and any breach of this provision may be regarded as a material breach of this Contract.

2.202 Unfair Labor Practices

Under 1980 PA 278, MCL 423.321, et seq., the State must not award a Contract or subcontract to an employer whose name appears in the current register of employers failing to correct an unfair labor practice compiled under Section 2 of the Act. This information is compiled by the United States National Labor Relations Board. A Contractor of the State, in relation to this Contract, must not enter into a contract with a Subcontractor, manufacturer, or supplier whose name appears in this register. Under Section 4 of 1980 PA 278, MCL 423.324, the State may void any Contract if, after award of this Contract, the name of Contractor as an employer or the name of the Subcontractor, manufacturer or supplier of Contractor appears in the register.

2.203 Workplace Safety and Discriminatory Harassment

In performing Services for the State, the Contractor must comply with the Department of Civil Services Rule 2-20 regarding Workplace Safety and Rule 1-8.3 regarding Discriminatory Harassment. In addition, the Contractor must comply with Civil Service regulations and any applicable agency rules provided to the Contractor. For Civil Service Rules, see <http://www.mi.gov/mdcs/0,1607,7-147-6877---,00.html>.

2.204 Prevailing Wage – Deleted – NA

2.210 Governing Law

2.211 Governing Law

This Contract must in all respects be governed by, and construed according to, the substantive laws of the State of Michigan without regard to any Michigan choice of law rules that would apply the substantive law of any other jurisdiction to the extent not inconsistent with, or pre-empted by federal law.

**2.212 Compliance with Laws**

Contractor must comply with indicated, amended or modified provisions of all applicable State, federal and local laws, rules and regulations. Contractor must comply with all State and federal Medicaid requirements, including, but not limited to, current and future rules, policies, guidelines, guidance and ordinances notifications and notices, in providing the Services/Deliverables.

2.213 Jurisdiction

Any dispute arising from this Contract must be resolved in the State of Michigan. With respect to any claim between the parties, Contractor consents to venue in Ingham County, Michigan, and irrevocably waives any objections it may have to the jurisdiction on the grounds of lack of personal jurisdiction of the court or the laying of venue of the court or on the basis of forum non conveniens or otherwise. Contractor agrees to appoint agents in the State of Michigan to receive service of process.

2.220 Limitation of Liability**2.221 Limitation of Liability**

Neither the Contractor nor the State is liable to each other, regardless of the form of action, for consequential, incidental, indirect, or special damages. This limitation of liability does not apply to claims for infringement of United States patent, copyright, trademark or trade secrets; to claims for personal injury or damage to property caused by the gross negligence or willful misconduct of the Contractor; to claims covered by other specific provisions of this Contract calling for liquidated damages; or to court costs or attorney's fees awarded by a court in addition to damages after litigation based on this Contract.

2.230 Disclosure Responsibilities**2.231 Disclosure of Litigation**

(a) Disclosure. Contractor must disclose any material criminal litigation, investigations or proceedings involving the Contractor (and each Subcontractor) or any of its officers or directors or any litigation, investigations or proceedings under the Sarbanes-Oxley Act. In addition, each Contractor (and each Subcontractor) must notify the State of any material civil litigation, arbitration or proceeding which arises during the term of this Contract and extensions, to which Contractor (or, to the extent Contractor is aware, any Subcontractor) is a party, and which involves: (i) disputes that might reasonably be expected to adversely affect the viability or financial stability of Contractor or any Subcontractor; or (ii) a claim or written allegation of fraud against Contractor or, to the extent Contractor is aware, any Subcontractor by a governmental or public entity arising out of their business dealings with governmental or public entities. The Contractor must disclose in writing to the Contract Administrator any litigation, investigation, arbitration or other proceeding (collectively, "Proceeding") within 30 days of its occurrence. Details of settlements which are prevented from disclosure by the terms of the settlement may be annotated. Information provided to the State from Contractor's publicly filed documents referencing its material litigation will be deemed to satisfy the requirements of this Section.

(b) Assurances. If any Proceeding disclosed to the State under this Section, or of which the State otherwise becomes aware, during the term of this Contract would cause a reasonable party to be concerned about:

- (i) the ability of Contractor (or a Subcontractor) to continue to perform this Contract according to its terms and conditions, or
- (ii) whether Contractor (or a Subcontractor) in performing Services for the State is engaged in conduct which is similar in nature to conduct alleged in the Proceeding, which conduct would constitute a breach of this Contract or a violation of Michigan law, regulations or public policy, then the Contractor must provide the State all reasonable assurances requested by the State to demonstrate that:
 - (a) Contractor and its Subcontractors must be able to continue to perform this Contract and any Statements of Work according to its terms and conditions, and
 - (b) Contractor and its Subcontractors have not and will not engage in conduct in performing the Services which is similar in nature to the conduct alleged in the Proceeding.



- (c) Contractor must make the following notifications in writing:
- (1) Within 30 days of Contractor becoming aware that a change in its ownership or officers has occurred, or is certain to occur, or a change that could result in changes in the valuation of its capitalized assets in the accounting records, Contractor must notify DMB Purchasing Operations.
 - (2) Contractor must also notify DMB Purchasing Operations within 30 days whenever changes to asset valuations or any other cost changes have occurred or are certain to occur as a result of a change in ownership or officers.
 - (3) Contractor must also notify DMB Purchasing Operations within 30 days whenever changes to company affiliations occur.

2.232 Call Center Disclosure

Contractor and/or all Subcontractors involved in the performance of this Contract providing call or contact center services to the State must disclose the location of its call or contact center services to inbound callers. Failure to disclose this information is a material breach of this Contract.

2.233 Bankruptcy

The State may, without prejudice to any other right or remedy, terminate this Contract, in whole or in part, and, at its option, may take possession of the "Work in Process" and finish the Works in Process by whatever appropriate method the State may deem expedient if:

- (a) the Contractor files for protection under the bankruptcy laws;
- (b) an involuntary petition is filed against the Contractor and not removed within 30 days;
- (c) the Contractor becomes insolvent or if a receiver is appointed due to the Contractor's insolvency;
- (d) the Contractor makes a general assignment for the benefit of creditors; or
- (e) the Contractor or its affiliates are unable to provide reasonable assurances that the Contractor or its affiliates can deliver the services under this Contract.

Contractor will fix appropriate notices or labels on the Work in Process to indicate ownership by the State. To the extent reasonably possible, materials and Work in Process must be stored separately from other stock and marked conspicuously with labels indicating ownership by the State.

2.240 Performance

2.241 Time of Performance

(a) Contractor must use commercially reasonable efforts to provide the resources necessary to complete all Services and Deliverables according to the time schedules contained in the Statements of Work and other Exhibits governing the work, and with professional quality.

(b) Without limiting the generality of **Section 2.241(a)**, Contractor must notify the State in a timely manner upon becoming aware of any circumstances that may reasonably be expected to jeopardize the timely and successful completion of any Deliverables/Services on the scheduled due dates in the latest State-approved delivery schedule and must inform the State of the projected actual delivery date.

(c) If the Contractor believes that a delay in performance by the State has caused or will cause the Contractor to be unable to perform its obligations according to specified Contract time periods, the Contractor must notify the State in a timely manner and must use commercially reasonable efforts to perform its obligations according to this Contract time periods notwithstanding the State's failure. Contractor will not be in default for a delay in performance to the extent the delay is caused by the State.

2.242 Service Level Agreements (SLAs) – Deleted – NA

2.243 Liquidated Damages – Deleted – NA

**2.244 Excusable Failure**

Neither party will be liable for any default, damage, or delay in the performance of its obligations under this Contract to the extent the default, damage or delay is caused by government regulations or requirements (executive, legislative, judicial, military, or otherwise), power failure, lightning, earthquake, war, water or other forces of nature or acts of God, delays or failures of transportation, equipment shortages, suppliers' failures, or acts or omissions of common carriers, fire; riots, civil disorders; strikes or other labor disputes, embargoes; injunctions (provided the injunction was not issued as a result of any fault or negligence of the party seeking to have its default or delay excused); or any other cause beyond the reasonable control of a party; provided the non-performing party and its Subcontractors are without fault in causing the default or delay, and the default or delay could not have been prevented by reasonable precautions and cannot reasonably be circumvented by the non-performing party through the use of alternate sources, workaround plans or other means, including disaster recovery plans.

If a party does not perform its contractual obligations for any of the reasons listed above, the non-performing party will be excused from any further performance of its affected obligation(s) for as long as the circumstances prevail, but the party must use commercially reasonable efforts to recommence performance whenever and to whatever extent possible without delay. A party must promptly notify the other party in writing immediately after the excusable failure occurs, and also when it abates or ends.

If any of the above-enumerated circumstances substantially prevent, hinder, or delay the Contractor's performance of the Services/provision of Deliverables for more than 10 Business Days, and the State determines that performance is not likely to be resumed within a period of time that is satisfactory to the State in its reasonable discretion, then at the State's option: (a) the State may procure the affected Services/Deliverables from an alternate source, and the State is not be liable for payment for the unperformed Services/ Deliverables not provided under this Contract for so long as the delay in performance continues; (b) the State may terminate any portion of this Contract so affected and the charges payable will be equitably adjusted to reflect those Services/Deliverables terminated; or (c) the State may terminate the affected Statement of Work without liability to Contractor as of a date specified by the State in a written notice of termination to the Contractor, except to the extent that the State must pay for Services/Deliverables provided through the date of termination.

The Contractor will not have the right to any additional payments from the State as a result of any Excusable Failure occurrence or to payments for Services not rendered/Deliverables not provided as a result of the Excusable Failure condition. Defaults or delays in performance by Contractor which are caused by acts or omissions of its Subcontractors will not relieve Contractor of its obligations under this Contract except to the extent that a Subcontractor is itself subject to an Excusable Failure condition described above and Contractor cannot reasonably circumvent the effect of the Subcontractor's default or delay in performance through the use of alternate sources, workaround plans or other means.

2.250 Approval of Deliverables – Deleted – NA**2.260 Ownership****2.261 Ownership of Work Product by State**

The State owns all Deliverables as they are works made for hire by the Contractor for the State. The State owns all United States and international copyrights, trademarks, patents, or other proprietary rights in the Deliverables.

2.262 Vesting of Rights

With the sole exception of any preexisting licensed works identified in the SOW, the Contractor assigns, and upon creation of each Deliverable automatically assigns, to the State, ownership of all United States and international copyrights, trademarks, patents, or other proprietary rights in each and every Deliverable, whether or not registered by the Contractor, insofar as any the Deliverable, by operation of law, may not be considered work made for hire by the Contractor for the State. From time to time upon the State's request, the Contractor must confirm the assignment by execution and delivery of the assignments, confirmations of assignment, or other written instruments as the State may request. The State may obtain and hold in its own name all copyright, trademark, and patent registrations and other evidence of rights that may be available for Deliverables.

**2.263 Rights in Data**

(a) The State is the owner of all data made available by the State to the Contractor or its agents, Subcontractors or representatives under this Contract. The Contractor must not use the State's data for any purpose other than providing the Services, nor will any part of the State's data be disclosed, sold, assigned, leased or otherwise disposed of to the general public or to specific third parties or commercially exploited by or on behalf of the Contractor. No employees of the Contractor, other than those on a strictly need-to-know basis, have access to the State's data. Contractor must not possess or assert any lien or other right against the State's data. Without limiting the generality of this Section, the Contractor must only use personally identifiable information as strictly necessary to provide the Services and must disclose the information only to its employees who have a strict need-to-know the information. The Contractor must comply at all times with all laws and regulations applicable to the personally identifiable information.

(b) The State is the owner of all State-specific data under this Contract. The State may use the data provided by the Contractor for any purpose. The State must not possess or assert any lien or other right against the Contractor's data. Without limiting the generality of this Section, the State may use personally identifiable information only as strictly necessary to utilize the Services and must disclose the information only to its employees who have a strict need to know the information, except as provided by law. The State must comply at all times with all laws and regulations applicable to the personally identifiable information. Other material developed and provided to the State remains the State's sole and exclusive property.

2.264 Ownership of Materials

The State and the Contractor will continue to own their respective proprietary technologies developed before entering into this Contract. Any hardware bought through the Contractor by the State, and paid for by the State, will be owned by the State. Any software licensed through the Contractor and sold to the State, will be licensed directly to the State.

2.270 State Standards**2.271 Existing Technology Standards**

The Contractor must adhere to all existing standards as described within the comprehensive listing of the State's existing technology standards at <http://www.michigan.gov/dit>.

2.272 Acceptable Use Policy

To the extent that Contractor has access to the State computer system, Contractor must comply with the State's Acceptable Use Policy, see <http://www.michigan.gov/ditservice>. All Contractor employees must be required, in writing, to agree to the State's Acceptable Use Policy before accessing the State system. The State reserves the right to terminate Contractor's access to the State system if a violation occurs.

2.273 Systems Changes

Contractor is not responsible for and not authorized to make changes to any State systems without written authorization from the Project Manager. Any changes Contractor makes to State systems with the State's approval must be done according to applicable State procedures, including security, access, and configuration management procedures.

2.280 Extended Purchasing – Deleted – NA**2.290 Environmental Provision****2.291 Environmental Provision**

Energy Efficiency Purchasing Policy – The State seeks wherever possible to purchase energy efficient products. This includes giving preference to U.S. Environmental Protection Agency (EPA) certified Energy Star products for any category of products for which EPA has established Energy Star certification. For other purchases, the State may include energy efficiency as one of the priority factors to consider when choosing among comparable products.

Environmental Purchasing Policy – The State of Michigan is committed to encouraging the use of products and services that impact the environment less than competing products. The State is accomplishing this by including environmental considerations in purchasing decisions, while remaining fiscally responsible, to promote practices that improve worker health, conserve natural resources, and prevent pollution.



Environmental components that are to be considered include: recycled content and recyclability; energy efficiency; and the presence of undesirable materials in the products, especially those toxic chemicals which are persistent and bioaccumulative. The Contractor should be able to supply products containing recycled and environmentally preferable materials that meet performance requirements and is encouraged to offer such products throughout the duration of this Contract. Information on any relevant third party certification (such as Green Seal, Energy Star, etc.) should also be provided.

Hazardous Materials:

For the purposes of this Section, "Hazardous Materials" is a generic term used to describe asbestos, ACBMs, PCBs, petroleum products, construction materials including paint thinners, solvents, gasoline, oil, and any other material the manufacture, use, treatment, storage, transportation or disposal of which is regulated by the federal, State, or local laws governing the protection of the public health, natural resources or the environment. This includes, but is not limited to, materials the as batteries and circuit packs, and other materials that are regulated as (1) "Hazardous Materials" under the Hazardous Materials Transportation Act, (2) "chemical hazards" under the Occupational Safety and Health Administration standards, (3) "chemical substances or mixtures" under the Toxic Substances Control Act, (4) "pesticides" under the Federal Insecticide Fungicide and Rodenticide Act, and (5) "hazardous wastes" as defined or listed under the Resource Conservation and Recovery Act.

(a) The Contractor must use, handle, store, dispose of, process, transport and transfer any material considered a Hazardous Material according to all federal, State, and local laws. The State must provide a safe and suitable environment for performance of Contractor's Work. Before the commencement of Work, the State must advise the Contractor of the presence at the work site of any Hazardous Material to the extent that the State is aware of the Hazardous Material. If the Contractor encounters material reasonably believed to be a Hazardous Material and which may present a substantial danger, the Contractor must immediately stop all affected Work, notify the State in writing about the conditions encountered, and take appropriate health and safety precautions.

(b) Upon receipt of a written notice, the State will investigate the conditions. If (a) the material is a Hazardous Material that may present a substantial danger, and (b) the Hazardous Material was not brought to the site by the Contractor, or does not result in whole or in part from any violation by the Contractor of any laws covering the use, handling, storage, disposal of, processing, transport and transfer of Hazardous Materials, the State must order a suspension of Work in writing. The State must proceed to have the Hazardous Material removed or rendered harmless. In the alternative, the State must terminate the affected Work for the State's convenience.

(c) Once the Hazardous Material has been removed or rendered harmless by the State, the Contractor must resume Work as directed in writing by the State. Any determination by the Michigan Department of Community Health or the Michigan Department of Environmental Quality that the Hazardous Material has either been removed or rendered harmless is binding upon the State and Contractor for the purposes of resuming the Work. If any incident with Hazardous Material results in delay not reasonable anticipatable under the circumstances and which is attributable to the State, the applicable SLAs for the affected Work will not be counted in **Section 2.212** for a time as mutually agreed by the parties.

(d) If the Hazardous Material was brought to the site by the Contractor, or results in whole or in part from any violation by the Contractor of any laws covering the use, handling, storage, disposal of, processing, transport and transfer of Hazardous Material, or from any other act or omission within the control of the Contractor, the Contractor must bear its proportionate share of the delay and costs involved in cleaning up the site and removing and rendering harmless the Hazardous Material according to Applicable Laws to the condition approved by applicable regulatory agency(ies).

Michigan has a Consumer Products Rule pertaining to labeling of certain products containing volatile organic compounds. For specific details visit http://www.michigan.gov/deq/0,1607,7-135-3310_4108-173523--,00.html

Refrigeration and Air Conditioning:

The Contractor must comply with the applicable requirements of Sections 608 and 609 of the Clean Air Act (42 U.S.C. 7671g and 7671h) as each or both apply to this Contract.

Environmental Performance:

Waste Reduction Program: Contractor must establish a program to promote cost-effective waste reduction in all operations and facilities covered by this Contract. The Contractor's programs must comply with applicable Federal, State, and local requirements, specifically including Section 6002 of the Resource Conservation and Recovery Act (42 U.S.C. 6962, et seq.).



2.300 Other Provisions

2.311 Forced Labor, Convict Labor, Forced or Indentured Child Labor, or Indentured Servitude Made Materials
Equipment, materials, or supplies, that will be furnished to the State under this Contract must not be produced in whole or in part by forced labor, convict labor, forced or indentured child labor, or indentured servitude.

“Forced or indentured child labor” means all work or service: exacted from any person under the age of 18 under the menace of any penalty for its nonperformance and for which the worker does not offer himself voluntarily; or performed by any person under the age of 18 under a contract the enforcement of which can be accomplished by process or penalties.



Appendix A – Pricing

Activity	Required Pricing Model	Pricing
A. Health Insurance Cost Avoidance and Recovery - Cost Avoidance - Recovery	Unit Price Contingency Fee	\$14.80 6.50%
A.1 Medical Support Enforcement – Insurance Eligibility Matching	Unit Price	\$14.80
B. Paternity Confinement Expense	Unit Price	\$6.95
C. Court Originated Liability	Contingency Fee	12.00%
D. Hospital Credit Balance/Overpayment Audits	Contingency Fee	8.50%
E. Estate Recovery	Contingency Fee	13.90%
F. Medical Support Enforcement – National Medical Support Notices	Unit Price	\$7.85
G. Potential Third Party Liability Activities	Variable	TBD*
H. Program Integrity	Variable	TBD

*HMS is unable to provide a single price for the multiple projects described in Section G - **Potential Third Party Liability Activities** and Section H – **Program Integrity**. These projects have multiple scopes with varying levels of effort that provide different financial benefits to DCH. If DCH decides to move forward with any of the projects defined in this Section, HMS will mutually agree, in writing, to the scope and price prior to initiating implementation activities.

Prices quoted are firm for the entire length of this Contract.

Health Management Systems, Inc. is offering a quick payment term of two percent off the accepted invoice if paid within 10 days.